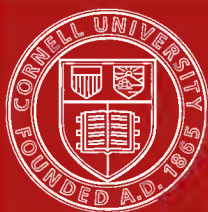


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BEFORE THE  
CENTRAL AMERICAN  
COURT OF JUSTICE

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THE REPUBLIC OF COSTA RICA  
AGAINST  
THE REPUBLIC OF NICARAGUA

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COMPLAINT

OF THE REPUBLIC OF COSTA RICA GROWING OUT OF A CONVENTION ENTERED INTO BY THE REPUBLIC OF NICARAGUA WITH THE REPUBLIC OF THE UNITED STATES OF AMERICA FOR THE SALE OF THE SAN JUAN RIVER AND OTHER MATTERS.

WITH APPENDICES

(PRINTED AT THE NATIONAL PRINTING OFFICE  
SAN JOSÉ, COSTA RICA)

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TRANSLATION

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WASHINGTON  
PRESS OF GIBSON BROS., INC.  
1916



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OF THE  
REPUBLIC OF COSTA RICA GROWING OUT OF A  
CONVENTION ENTERED INTO BY THE REPUB-  
LIC OF NICARAGUA WITH THE REPUBLIC OF  
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TRANSLATION

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## APPEARANCE OF COUNSEL.

THE MOST EXCELLENT,

THE CENTRAL AMERICAN COURT OF JUSTICE:

I, Luis Castro Ureña, attorney at law of Costa Rica and special counsel representing that country (Appendix "A"), respectfully represent before this Honorable Court as follows:

### LEGAL ANTECEDENTS.

#### I.

##### CAÑAS-JEREZ TREATY.

The Cañas-Jerez treaty (Appendix "B") which was entered into between Costa Rica and Nicaragua on the 15th day of April, 1858, stipulates:

"ART. 6. The Republic of Nicaragua shall have exclusive dominion and the highest sovereignty over the waters of the San Juan River from their issue out of the lake to their discharge into the Atlantic; but the Republic of Costa Rica shall have in those waters perpetual rights of free navigation from the said mouth of the river up to a point three English miles below Castillo Viejo, for purposes of commerce, whether with Nicaragua or with the interior of Costa Rica, over the San Carlos or Sarapiquí rivers or any other course starting from the part which has been established as belonging to that republic on the banks of the San Juan. The vessels of either country may touch at any part of the banks of the river where the navigation is common without paying any dues except such as may be established by agreement between the two governments.

"ART. 8. If the contracts for canalization or transit entered into before the Nicaraguan government had knowledge of this convention should for any cause cease to be in force, Nicaragua agrees not to conclude any others relating to the objects above

stated without first hearing the opinion of the Costa Rican government respecting the disadvantages that may result to the two countries, provided that opinion be given within thirty days after the request therefor shall have been received, in case that the Nicaraguan government should indicate that a decision is urgent; and in the event that the enterprise should cause no injury to the natural rights of Costa Rica, that opinion shall be advisory."

## II.

### ESQUIVEL-ROMÁN CONVENTION.

By the Esquivel-Román convention (Appendix "C") concluded between Costa Rica and Nicaragua on the 24th of December, 1886, both republics submitted the question of the validity of the Cañas-Jerez treaty, then pending between the parties, to the unappealable arbitral decision of His Excellency the President of the United States.

Article VII of that convention provides:

"The arbitral award, whatever it may be, shall be held as a perfect and obligatory treaty between the contracting parties; it shall admit of no appeal, and its execution shall commence within thirty days after each government, or their representatives, shall have received notification thereof."

## III.

### THE CLEVELAND AWARD.

The Cleveland award (Appendix "CH"), rendered on the 22nd of March, 1888, by His Excellency the President of the United States of America, by virtue of the Esquivel-Román convention, contains the following definite opinions and findings respecting the Cañas-Jerez treaty in general, and in particular respecting the two articles of that treaty above quoted:

"*First.*—The above-mentioned Treaty of Limits, signed on the 15th day of April, one thousand eight hundred and fifty-eight, is valid.

*“Second.*—The Republic of Costa Rica under said treaty and the stipulations contained in the sixth article thereof, has not the right of navigation of the River San Juan with vessels of war; but she may navigate said river with such vessels of the revenue service as may be related to and connected with her enjoyment of the ‘purposes of commerce’ accorded to her in said article, or as may be necessary to the protection of said enjoyment.

*“Third.*—With respect to the points of doubtful interpretation communicated as aforesaid by the Republic of Nicaragua, I decide as follows: \* \* \*.”

“10. The Republic of Nicaragua remains bound not to make any grants for canal purposes across her territory without first asking the opinion of the Republic of Costa Rica, as provided in Article VIII of the Treaty of Limits of the 15th day of April, one thousand eight hundred and fifty-eight. The natural rights of the Republic of Costa Rica alluded to in the said stipulation are the rights which, in view of the boundaries fixed by the said Treaty of Limits, she possesses in the soil thereby recognized as belonging exclusively to her; the rights which she possesses in the harbors of San Juan del Norte and Salinas Bay; and the rights which she possesses in so much of the river San Juan as lies more than three English miles below Castillo Viejo, measuring from the exterior fortifications of the said castle as the same existed in the year 1858; and perhaps other rights not here particularly specified. These rights are to be deemed injured in any case where the territory belonging to the Republic of Costa Rica is occupied or flooded; where there is an encroachment upon either of the said harbors injurious to Costa Rica; or where there is such an obstruction or deviation of the River San Juan as to destroy or seriously impair the navigation of the said river or any of its branches at any point where Costa Rica is entitled to navigate the same.

“11. The Treaty of Limits of the 15th day of April, one thousand eight hundred and fifty-eight, does not give to the Republic of Costa Rica the right to be a

party to grants which Nicaragua may make for inter-oceanic canals; though in cases where the construction of the canal will involve an injury to the natural rights of Costa Rica, her opinion or advice, as mentioned in Article VIII of the treaty, should be more than 'advisory' or 'consultative.' It would seem in such cases that her consent is necessary, and that she may thereupon demand compensation for the concession she is asked to make; but she is not entitled as a right to share in the profits that the Republic of Nicaragua may reserve for herself as a compensation for such favors and privileges as she, in her turn, may concede."

#### IV. THE CAÑAS-JEREZ TREATY IN FORCE.

The Cañas-Jerez treaty has preserved in its entirety all of its obligatory force from the time of its ratification down to the present moment, as well by virtue of the categorical decisions of the Cleveland award which I have just quoted, as—before and after the rendition of that award—by reason of the very nature of its stipulations which are permanent in character. So that, in the absence of the mutual consent of the contracting parties, that treaty can in no case and at no time be denounced or held as an expired contract, nor can the agreements therein contained be evaded so long as Costa Rica and Nicaragua continue to be free nations. The validity and effectiveness of that pact is absolute and unqualified by any fixed or determined term; these qualities have been recognized and proclaimed by the arbitral decision of a chief of state as honorable and of as high a prestige as any in the entire world.

Inexplicable to my government, therefore, is the fact (to which I will revert later on) that Nicaragua has negotiated respecting a canal across her territory in pretended disregard of Costa Rica and with the very nation whose government, as such, by agreed designation of both con-

tending parties, rendered the award which, harmonizing with the Cañas-Jerez treaty, disqualified her from so negotiating without the advisory—indeed, the decisive—opinion of the Republic of Costa Rica. I say the “decisive” opinion because, to my Government, it would seem to be impossible that a third party could construct a canal for navigation through the San Juan River route without injuring by that work, or as a result thereof, the contractual and natural rights of Costa Rica which were established by the Cañas-Jerez treaty and confirmed by the Cleveland award.

There can be no possible doubt about this. If the United States of America, or an assignee of its rights—for there is nothing to prevent a transfer of such rights—should adopt for the canal the San Juan River route, it is obvious that, the United States and Nicaragua not having expressly made any reservation that would guarantee to Costa Rica the enjoyment of the advantages conferred upon her by the Cañas-Jerez treaty, that enjoyment must be subject hereafter to the mere good will of the United States in securing for her those advantages. In a word, Nicaragua has bargained with the United States of America concerning, or has sold to the latter, the San Juan River, without reserve, as though she were its absolute owner, together with its banks, and Costa Rica, who possesses the incontestable right to navigate freely the greater part of those waters, and who is the sovereign of the greater part of the southern banks of that river, has been completely ignored in the transaction.

## V.

### CENTRAL AMERICAN TREATY OF WASHINGTON.

Article IX of the General Treaty of Peace and Friendship, concluded the 20th of December, 1907, between the five republics that formerly made up the Federal Republic of Central America (Appendix “D”), provides:

“The merchant vessels of the signatory countries shall, in the seas, coasts and ports of the said countries, be considered as national vessels; they shall enjoy the same exemptions, privileges and concessions that pertain to such vessels, and shall not be required to pay dues, nor shall any other charges be imposed upon them than those paid by and imposed on the vessels of the respective countries.”

It is evident, then, that respecting navigation any subsequent treaty or convention that Nicaragua may have subscribed to or to which she may in the future subscribe, and that fails to reserve to the merchant vessels of Costa Rica, Salvador, Guatemala and Honduras plying her waters or anchoring therein, privileges and advantages identical with those enjoyed by her own vessels, violates openly the article above quoted.

And it may not be inappropriate to recall at this moment that the Treaty and Conventions of Washington, of 1907, between the republics born out of the extinct Federation of Central America, were conceived, debated and concluded through the friendly mediation of the Government of the United States of America. These conventions have, therefore, the moral guaranty of that great nation.

## VI.

### NICARAGUA'S LEGAL CAPACITY LIMITED.

From the foregoing there can be no doubt that Nicaragua, respecting all matters looking to a canal across her territory, and, in general, respecting everything relating to navigation of her waters, is limited in her sovereignty by the treaties and conventions above pointed out, for those pacts necessarily modify her legal capacity by subjecting it to the agreements solemnly entered into.

## VII.

## LAWS OF NICARAGUA.

Note also Article 2479 of the Civil Code of Nicaragua, promulgated on the 5th of February, 1904, and since that date in full force:

“All contracts legally entered into are laws binding upon the contracting parties, and may not be invalidated except upon mutual consent and for lawful cause.”

The earlier civil code of that republic, adopted in 1871 and with slight modifications similar to Bello's Chilean code, does not lay down this principle in such precise form; but its essence is to be found in several of its provisions.

Prior to 1871 Nicaragua had no civil code properly so-called, but was governed by the ancient laws of Spain, with variations and amplifications resulting from single and occasional laws that never reached the form or dignity of a real code.

The old laws of Spain consecrated the contract as the principal form of obligation, even when literal proof thereof was not to be found.

“Every *pleyto*\* entered into lawfully between two men, whether in writing or without writing, even though penalty be not provided for, shall be firmly kept, and the Alcalde shall cause it to be kept; and if penalty has been provided for in the *pleyto* (contract), whosoever goes against the contract, incurs the penalty as expressed in the contract.” (*Fuero Real*, Book I, title XI, Law I.)

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\*It is unnecessary to recall that, in the ancient Spanish, “*pleyto*” signified compact, agreement, adjustment, treaty or bargain, in the period of the King Don Alfonso IX—1172-1230.

“When it appears that one man wishes to obligate himself to another by a promise, or by some contract, or in any other manner, he will be bound thereby to those to whom he is obligated, and no exception may be opposed that was not stipulated; as for instance promising with certain solemnities of law; or that the obligation of the contract was made between absent persons; or that it was made before a public scrivener or before some other person empowered in the name of another when between absentees; or that one has obligated himself to give, or to do, a certain thing to another. But any obligation or contract shall be binding that was made in any manner that showed that one wished to be obligated to another and make a contract with him.” (*Ordenamiento de Alcalá*, Single Law, Title XVI.)

“When it appears that one wished to obligate himself to another by promise, or by any contract, or in any other manner, he will be bound to fulfill that which he obligated himself to do, and no exception may be opposed that was not made a stipulation, as for instance, *promising with certain solemnity of law*, or that the contract or obligation was made between absent persons, or that it was not made before a public scrivener, or that it was made before some other private person in the name of another when between absentees, or that one has obligated himself to give, or do, to another a certain thing. We order, that the said obligation and contract are binding in whatever way it appears that one wished to obligate himself to another.” (*Novísima Recopilación*, Book Tenth, Title First, Law I.)

Such, then, is the atmosphere in which Nicaragua was born and in which she has lived; and when the Cañas-Jerez treaty was signed and ratified, and before that time, since and always, the inviolability of the pledged word has been one of the dogmas of that country, whether it be given in writing or verbally, according to the dispositions of the Spanish laws that stood as exponents of the nobility

of the kings that promulgated them—and those kings were the greatest gentlemen of their times. Nor has our sister on the North ever sought to withdraw herself from the standards of the law, and I cherish the hope that she will not in this case make an exception in her course.

#### VIII. SILENCE REGARDING SPECIAL PRINCIPLES OF INTERNATIONAL LAW.

I do not invoke in this petition any special principle of international law, for, since Costa Rica's rights are based upon perfect contracts signed with and by Nicaragua, it is, in my opinion, to them alone that we need address ourselves for a solution of the differences here raised. The contract is the supreme law between the parties, whether they be simple individuals or political entities. In other words, the case I am going to put *sub judice* is one of pure civil law, and not only the body of the laws of Nicaragua, but that of Costa Rica, as well as those of all other nations of the globe, uphold the contract as the juridical bond between parties. With respect to states, the contract entered into by them is something more than an obligatory tie; respect for the substance of the agreement, and its faithful fulfillment, are corner stones of national honor, and no defense suffices for failure to observe this canon.

Nor is there any code of positive international law that must be adhered to by states under appropriate sanction; wherefore the so-called "principles of international law" are not precise, but are rather opinions more or less authoritative and discreet submitted by the authors on that subject. The genuine positive precept in this sense is the contract, when there is one, and about it the nations must range themselves. The opinions of the authors are, of course, of great importance, but only when they treat of contractual relations, or when no specific conven-

tion is the medium between the disagreeing parties, for, if the contract exists, its terms are the exclusive bases of understanding and opinion in the difficulty.

And, finally, it would be rather presumptuous to collate a mass of elementary authorities and seek therewith to persuade the eminent judges of this High Tribunal, who unquestionably must know more than any one else regarding technical subjects in order to fulfill their delicate mission.

Nevertheless, if hereafter I should find it necessary to reinforce my arguments as a result of the reply of the other side, I shall then justify myself to the point of satiety and show that the opinions I have stated in this work, respecting the lore on the question, are the pure reflection of sane criterions; that is, of the doctrine put forth under the authority of the most conspicuous writers on the law of all countries and of all periods.

## ARGUMENTS OF FACT.

### I.

#### COSTA RICA LEARNS OF THE SIGNING OF A TREATY BY NICARAGUA AND THE UNITED STATES RELATING TO A CANAL ACROSS NICARAGUAN TERRITORY.

In the beginning of April of 1913 the knowledge came to the Government of Costa Rica, through private sources, that the Most Excellent Legislative Assembly of Nicaragua had just given its approval, in secret session, to a treaty (also secret) concluded between the governments of that Republic and that of the United States of America, among other things, for the opening of an interoceanic canal through Nicaraguan territory.

## COSTA RICA'S PROTEST TO NICARAGUA.

That notice, which was the first Costa Rica had received on the subject, moved my Government to instruct its Minister in Nicaragua to address to the Government of that republic a formal diplomatic protest against the execution on her part of the said canal pact, on the ground that that act was, and still is, in the opinion of my Government, a flagrant violation of the existing treaties between the two countries and of the Cleveland award. The Costa Rican Minister, in obedience to these instructions, presented to the Government of Nicaragua, on the 27th of that month of April, the protest with which he was charged (Appendix "F").

## COSTA RICA'S PROTEST TO THE UNITED STATES.

At the same time the Costa Rican Minister Plenipotentiary at Washington, also in obedience to instructions from my Government, lodged with the Government of the United States of America a similar diplomatic protest against the conclusion on the part of Nicaragua of that canal convention, which convention—as it was with due propriety declared to the Governments of Nicaragua and the United States of America—could not but be held to be void in point of law for failure of legal capacity in Nicaragua to enter into negotiations for that purpose without previously having consulted the opinion of Costa Rica thereon, or even having sought the acquiescence of my Government in the respective stipulations (Appendix "G").

## NICARAGUA'S REPLY.

His Excellency the Nicaraguan Secretary of Foreign Relations, in his note of June 12, 1913, replied to the protest of the Costa Rican Minister informing him that "the Government of Nicaragua exercised an incontestably sovereign right in concluding with the Government of the United States the convention of February 8th last, which is being kept secret for considerations of an international character, binding not alone upon that Government; but declares positively that in entering into that pact it has not ignored any right belonging to Costa Rica, nor has it committed \* \* \* any violation of the existing treaties between the two nations"; that "that convention \* \* \* is intended to procure so far as it can the construction of the interoceanic canal over a route exclusively Nicaraguan"; that "it hardly deals with a preferential right, granted to the United States, to open an interoceanic waterway, following a route traced through the national territory, when the fact is that the construction is to be resolved upon, by agreement of both governments and the conditions under which the canal is to be constructed, operated and maintained, are to be determined between the contracting parties by a further convention or treaty;" that "dealing, therefore, with a simple option for a canal concession, Nicaragua, as the sole sovereign of the territory that is to serve as the site of the great enterprise, is wholly within her incontestable rights in entering into that promise"; and that "in view of the foregoing, \* \* \* the views contained in the note to which this is a reply are entirely unfounded, since it was shown by an abundance of reasons and arguments on the conclusion of the said convention that, on the part of Nicaragua, there has been no violation of existing

treaties or discourtesy towards Costa Rica, nor any forgetfulness or ignoring of her legitimate rights" (Appendix "H").

It will be noted that I have quoted no more from the reply under discussion than suffices for the purposes of this work. Reference is made, however, to the original or to the true copy attached hereto.

## 5.

"LA REPÚBLICA" PUBLISHES THE TEXT OF A CANAL TREATY.

*La República*, an independent daily paper of this city, in its No. 8,810, of July 4, 1913, published the text of the treaty which, according to that newspaper, had been signed by the governments of Nicaragua and the United States of America relating to the opening of the canal in question (Appendix "L"). It is clear that my Government did not attribute any authenticity to the publication, the source of which was unknown to it; but I do desire to state that it does not appear that the Government of Nicaragua, fully informed of the event, disavowed the publication, either by the press or in other form, and that *La República* was a newspaper violently opposed to the Costa Rican Government.

## 6.

COSTA RICA'S INQUIRY ADDRESSED TO NICARAGUA.

Under date of July 30, above mentioned, the Costa Rican Minister in Nicaragua, in obedience to instructions from my Government, transmitted to the Government of that republic a copy of the newspaper referred to, together with a note in which that Government is requested to "state categorically whether the text of said convention is authentic, not only in general but in each of its clauses, and, if not, to indicate the corresponding corrections (Appendix 'I')."

## NICARAGUA'S REFUSAL TO DIVULGE TREATY.

His Excellency the Nicaraguan Secretary of Foreign Relations, on the 4th of August, 1913, replied to that communication of the Costa Rican Minister, "confirming what was stated in his note of June 12, last, that, for considerations of an international character, binding not alone upon his Government, the latter is keeping secret the convention entered into with the United States on the 8th of last February; and that since it relates to an agreement not yet perfected, it is not proper for the Nicaraguan Government, on its part, for the reasons stated in its said note, to make any official declaration whatever regarding any of the points embraced in that negotiation (Appendix 'J')."

CANAL CONVENTION TAKEN UNDER CONSIDERATION BY  
THE UNITED STATES SENATE.

Later, through the North American press, my Government learned that the Senate of that nation was considering a treaty—which my Government supposed was the same that had been reproduced by *La República* in its above-mentioned issue, and that had been alluded to by the Nicaraguan Secretary of Foreign Relations in his notes of June 12 and August 4, 1913 (sections 4 and 7 of this chapter)—signed by the Governments of Nicaragua and the United States of America, relating to the opening of a canal through Nicaraguan territory, and to other matters then for the moment unimportant to my Government; and that the distinguished North American man of affairs, Mr. John N. Popham, who has many interests rooted in Costa Rica and great sympathy with her concerns, whilst on a private business trip to his country,

generously and of his own accord interposed his valued interest with certain senators of that great republic to the end that, when the treaty in question should come up for debate and ratification, the rights of Costa Rica in connection with any interoceanic canal in Nicaraguan territory might not only not be overlooked but respected and guaranteed in accordance with the Cañas-Jerez treaty and the Cleveland award.

Among the documents attached hereto appears a printed copy of a brief addressed by Mr. Popham to the Committee on Foreign Relations of the United States Senate (Appendix "LL").

## 9.

## NEW TREATY FOR A CANAL ACROSS NICARAGUA.

About the middle of August, 1914, my Government was unofficially assured that the aforesaid treaty for a canal across Nicaragua had been in fact tacitly withdrawn from the consideration of the United States Senate; but that there was at that time before that exalted body another pact—similar, if not the same, in ground work, at least with regard to a canal through Nicaragua—negotiated by the same high contracting parties that signed the first treaty; that is, the one that bore date of February 8, 1913, according to information given by the Secretary of State of Nicaragua.

## 10.

## SECRECY MAINTAINED BY NICARAGUA AND THE UNITED STATES.

But regarding this new pact, or the signature and contents of the other, or the status of the negotiations then reached with respect thereto, my Government had no official information, for everything in connection with the

matter was carried on in the strictest secrecy, as well on the part of Nicaragua as on the part of the United States of America.

## II.

### COSTA RICA'S CONSEQUENT INABILITY TO FORMULATE ACTION.

My Government was, therefore, unable to formulate any action at that time against the treaty of February 8, 1913, between Nicaragua and the United States relating to an interoceanic canal across Nicaraguan territory, nor could it attack, except in the most general terms, any analogous convention subsequently negotiated by those parties, for, in violation of the explicit and solemn assurances by Nicaragua, the latter's first care at that time was at all hazards, and in any event, to conceal her canal negotiations from Costa Rica.

## 12.

### PERIOD OF INACTION ON QUESTION.

The year 1914 came to an end and 1915 passed without final action, or further consideration of the Nicaraguan canal matter by the United States Senate. My Government, at least, heard nothing to the contrary.

## 13.

### THE CONTROVERSY REVIVES.

Whilst, then, Costa Rica was unsuspectingly awaiting developments, *The Evening Star* of Washington, in its issue of February 2 of the present year, gave out the news that the Committee on Foreign Relations of the United States Senate had recommended the ratification by that body of the treaty which had been signed more than a year previously by the respective plenipotentiaries

of the United States and Nicaragua, among other objects, for the construction of an interoceanic canal across Nicaraguan territory.

## 14.

#### THE COSTA RICAN LEGATION AT WASHINGTON TAKES ACTION.

On receipt of the above news, the Costa Rican Legation at Washington hastened to send, on the very day that the newspaper article appeared, to the Secretary of State of the United States, a respectful note requesting the Government of that country to prevent the ratification by the United States of the convention in question on the ground that it openly violated the existing treaties between Costa Rica and Nicaragua and the Cleveland award, and was not in harmony with the admirable intentions which animated His Excellency the President of the United States, respecting the peoples of the Americas, put forth in his most recent public and official declarations before more than a thousand delegates assembled in representation of the various nations of the American continent (Appendix "M").

## 15.

#### MEMORANDUM OF HARRY WESTON VAN DYKE, ESQUIRE.

Actuated by the same purpose that prompted the note of our Minister at Washington, the attorney for the Costa Rican Legation in that capital, Harry W. Van Dyke, Esquire, an international lawyer of excellent reputation and high standing, prepared and published a memorandum of much merit (Appendix "N"); but the efforts of our attorney failed as did those of our diplomatic representative. The memorandum was addressed to and filed with the United States Senate.

THE RATIFICATION OF THE BRYAN-CHAMORRO TREATY  
BY THE UNITED STATES. ITS TEXT.

The *Congressional Record* of Washington, in its issue of February 18, of the present year, reported the news that the Senate of the United States of America, in its executive session of that day, had ratified a convention between that republic and Nicaragua, which had been signed at Washington on the 5th of August, 1914, and which, with the additions made by that exalted body, reads as follows:

“The Government of the United States of America and the Government of Nicaragua being animated by the desire to strengthen their ancient and cordial friendship by the most sincere cooperation for all purposes of their mutual advantage and interest and to provide for the possible future construction of an interoceanic ship canal by way of the San Juan River and the great Lake of Nicaragua, or by any route over Nicaraguan territory, whenever the construction of such canal shall be deemed by the Government of the United States conducive to the interests of both countries, and the Government of Nicaragua wishing to facilitate in every way possible the successful maintenance and operation of the Panama Canal, the two Governments have resolved to conclude a Convention to these ends, and have accordingly appointed as their plenipotentiaries:

“The President of the United States, the Honorable William Jennings Bryan, Secretary of State; and

“The President of Nicaragua, Señor General Don Emiliano Chamorro, Envoy Extraordinary and Minister Plenipotentiary of Nicaragua to the United States;

“Who, having exhibited to each other their respective full powers, found to be in good and due form, have agreed upon and concluded the following articles:

## "ARTICLE I.

"The Government of Nicaragua grants in perpetuity to the Government of the United States, *forever free from all taxation or public charge*, the exclusive proprietary rights necessary and convenient for the construction, operation and maintenance of an interoceanic canal by way of the San Juan River and the great Lake of Nicaragua or by way of any route over Nicaraguan territory, the details of the terms upon which such canal shall be constructed, operated and maintained to be agreed to by the two governments whenever the Government of the United States shall notify the Government of Nicaragua of its desire or intention to construct such canal.

## "ARTICLE II.

"To enable the Government of the United States to protect the Panama Canal and the proprietary rights granted to the Government of the United States by the foregoing article, and also to enable the Government of the United States to take any measure necessary to the ends contemplated herein, the Government of Nicaragua hereby leases for a term of ninety-nine years to the Government of the United States the islands in the Caribbean Sea known as Great Corn Island and Little Corn Island; and the Government of Nicaragua further grants to the Government of the United States for a like period of ninety-nine years the right to establish, operate and maintain a naval base at such place on the territory of Nicaragua bordering upon the Gulf of Fonseca as the Government of the United States may select. The Government of the United States shall have the option of renewing for a further term of ninety-nine years the above leases and grants upon the expiration of their respective terms, it being expressly agreed that the territory hereby leased and the naval base which may be maintained under the grant aforesaid shall be subject exclusively to the laws and sovereign authority of the United States during the terms of such lease and grant and of any renewal or renewals thereof.

“ARTICLE III.

“In consideration of the foregoing stipulations and for the purposes contemplated by this Convention and for the purpose of reducing the present indebtedness of Nicaragua, the Government of the United States shall, upon the date of the exchange of ratification of this Convention, pay for the benefit of the Republic of Nicaragua the sum of three million dollars United States gold coin, of the present weight and fineness, to be deposited to the order of the Government of Nicaragua in such bank or banks or with such banking corporation as the Government of the United States may determine, to be applied by Nicaragua upon its indebtedness *or other public purposes for the advancement of the welfare of Nicaragua in a manner to be determined by the two High Contracting Parties, all such disbursements to be made by orders drawn by the Minister of Finance of the Republic of Nicaragua and approved by the Secretary of State of the United States or by such person as he may designate.*

“ARTICLE IV.

“This Convention shall be ratified by the High Contracting Parties in accordance with their respective laws, and the ratifications thereof shall be exchanged at Washington as soon as possible.

“In witness whereof the respective plenipotentiaries have signed the present treaty and have affixed thereunto their seals.

“Done at Washington, in duplicate, in the English and Spanish languages, on the 5th day of August, in the year nineteen hundred and fourteen.

“WILLIAM JENNINGS BRYAN. [SEAL.]

“EMILIANO CHAMORRO.” [SEAL.]

(Appendix “Ñ,” p. 3192.)

CONFLICT BETWEEN THE BRYAN-CHAMORRO TREATY AND  
THE CAÑAS-JEREZ TREATY, THE CENTRAL AMERICAN  
TREATY OF WASHINGTON AND THE CLEVELAND AWARD.

Examination of the Bryan-Chamorro treaty and comparison thereof with the Cañas-Jerez treaty, with the Cleveland award, which stands as the authentic interpretation of the latter, and with the Central American Treaty of Washington, demonstrate that the first named is in plain conflict with the others in the respects which I am now going to point out.

(a) Navigation of the San Juan River.

The Cañas-Jerez treaty, interpreted by the Cleveland award, concedes to Costa Rica the perpetual right to free navigation of the waters of the San Juan, from its discharge into the Atlantic up to three English miles below Castillo Viejo, for commercial purposes, whether with Nicaragua or with the interior of Costa Rica and over whatever waterways of the latter that empty, or may empty, into the San Juan; it gives to Costa Rican vessels the right, free from tolls of any kind, to touch along the Nicaraguan banks of that river in that part thereof in which navigation is common; and puts Costa Rican vessels in the fiscal service in the same class with the merchant vessels of that same country in the matter of their protection, or with respect to the said commercial purposes.

With regard to the San Juan River, the conventional rights of Costa Rica are in a certain aspect less than the rights inherent in co-ownership (*condominio*); Costa Rica cannot, for example, ply that stream with her vessels of war, as Nicaragua has the right to do unquestionably; but on the other hand those rights are greater than those of

a mere co-proprietor (*copropietario*), because Costa Rican vessels, merchantmen as well as revenue cutters, enjoy, in the zone of common navigation, a free course in the whole of the river throughout its length and breadth, and free access, exempt from duties, to any point on the Nicaraguan shore.

So that, if the United States, under the authority of the Bryan-Chamorro treaty, should construct the inter-oceanic canal by way of the San Juan River, the absolute unrestricted dominion over which has been ceded to her by Nicaragua, it is easy to foresee the fate of Costa Rica's rights to navigation on the San Juan, rights which she now, as well as formerly, recognized as being less than those pertaining to co-ownership (*condominio*), but in part—perhaps the most important part—much greater than those of a simple co-proprietor (*copropietario*).

Nicaragua, then, in entering into the Bryan-Chamorro treaty, completely forgot that she could not dispose unreservedly of the San Juan River, for in and to that gift of nature Costa Rica also possesses perfectly clear rights of transcendental usefulness, perhaps equal to that of the Nicaraguan rights, however much the latter country may have tried to cancel them utterly by means of a conveyance that is void in every element affecting the rights of a third party—Costa Rica. *The sale of another's thing is null.* This is an external axiom of law and justice—*organic*, indeed—among all peoples that hold themselves civilized.

The canal, to look at the matter from another point of view, will result in fact in a diminution of Costa Rican territory, which to-day reaches in reality up to the Nicaraguan shores of the San Juan River, from three English miles below Castillo Viejo, with relation to the stream, down to the Atlantic Ocean; and Costa Rica, in spite of this, has not even been consulted in this matter.

(b) The Matter of Costa Rica's Consent.

By virtue of the Cañas-Jerez treaty and the Cleveland award, Costa Rica's *consultative* opinion *must* be secured for the concluding of any agreement which Nicaragua purposes to carry out respecting the construction of a canal across her soil; but if the enterprise injures the natural rights of Costa Rica, that opinion ceases to be consultative and becomes *decisive*. That is to say, if the work should occasion any damage to Costa Rica, she must be brought into the transaction.

Even though there were no Cañas-Jerez treaty or Cleveland award, that last conclusion would be sound, for it is no more than a maxim of equity; but Nicaragua is entirely astray this time. In spite of the protests of Costa Rica, and against them, she has permitted herself to contract alone with the United States respecting a canal, thus indisputably violating the rights of Costa Rica which she, more than any other, is obligated to safeguard, even though solely out of regard for the Cañas-Jerez treaty and Cleveland award.

Nicaragua has not even besought the required expression of Costa Rica's opinion in this emergency; but let us assume that this implies a mere discourtesy between the two nations which Costa Rica is willing to overlook in the interest of the moral union and solidarity of the Central American nation. Nevertheless, the canal convention, which was so carefully and so long kept secret by the United States and Nicaragua, being now so well known in all its details, Costa Rica can no longer remain quiet and mute, because that pact, from the instant of its attack on Costa Rica's rights to the navigation of the San Juan River and to the integrity of national territory in that region, could not pass unnoticed by that country. Costa Rica, armed with the right, maintains that that convention

can constitute the law for no one without her acquiescence in the clauses that so gravely menace her interests.

The United States on her part cannot plead ignorance of the legal antecedents of the case, not only because of the official notes and protests transmitted by Costa Rica to her Government in relation to the point in question, but because the Cleveland award is a public act of that Government.

His Excellency President Cleveland gave an account of that award in his Message of December 3, 1888, and His Excellency President McKinley alluded to the same document in his Message of December 3, 1890, both messages being addressed to the Congress of the United States of America (*Messages and Papers of the Presidents*, Washington, 1911, pages 5369 and 6426). And His Excellency President Lincoln, in his Message of December 6, 1864, addressed also to Congress, informed that body that, at the instance of Costa Rica and Nicaragua, he had authorized a qualified engineer to survey the San Juan River and port of San Juan del Norte (*Ibid.*, page 3444). In 1864, then, Nicaragua knew that Costa Rica possessed rights in the San Juan River and in the port of San Juan del Norte, and the United States also knew this; and now, although nothing has transpired since then in this connection except the Cleveland award that confirmed and invigorated those same rights, Nicaragua and the United States appear to have been unaware of them, notwithstanding that the Statement of Mr. Popham and the Memorandum of Mr. Van Dyke, above referred to, and other private works pertinent thereto, which made their appearance whilst the matter was within the knowledge of the Government and Senate of the United States, in addition to the official documents enunciated, must have concurred to illustrate the understanding of the United States in this matter.

## (c) Navigation in Nicaraguan Maritime Waters.

It is established by the Central American Treaty of Washington that the merchant vessels of any of the signatory powers shall enjoy equal rights with those of all other contracting parties when in the seas, coasts or ports of those countries.

Nicaragua thus restricted herself in favor of her sisters of the old Federation of Central America just as the latter, in their turn, restricted themselves for her benefit in the matter of their enjoyment of the advantages of their maritime waters, coasts and ports, for the period of ten years which has not yet expired, and which can be extended indefinitely from year to year (Article XIX of the treaty). How, then, can a valid lease be given to the United States of any part of the littoral and waters of the Gulf of Fonseca and the Corn Islands of the Caribbean Sea without the obligations stipulated in the Central American Treaty of Washington? It cannot; nor can Nicaragua get rid of the Central American Treaty of Washington without the concurrence of the respective wills of the other contracting parties.

An impediment of equal weight arises out of the same instrument to prevent the sale of territory that may be occupied or needed by the interoceanic canal, since that locality embraces parts of the soil and waters of Nicaragua covered by the Central American Treaty of Washington, *for no one can transfer more rights than he possesses, or those that he does not possess.*

The preceding observations of this paragraph apply in general to all the republics that subscribed to the Central American Treaty of Washington; and with respect to Costa Rica, even more arises to her out of the Cañas-Jerez treaty and the Cleveland award:

By Article 4 of the Cañas-Jerez treaty, Salinas Bay, on the Pacific Ocean, and the Bay of San Juan del Norte,

on the Atlantic Ocean, are common to Costa Rica and Nicaragua. What, then, will be the situation if the United States shall elect for the beginning or entrance of its canal the two bays mentioned?

It is evident that in that supposition the rights of Costa Rica in those bays will vanish on the horizon of history, unless right and justice retain their sway in the country of the immortal George Washington.

## 18.

## COSTA RICA'S FINAL PROTEST.

As soon as the ratification of the Bryan-Chamorro treaty by the United States Senate appeared in the *Congressional Record* our Legation at Washington made a careful study of that instrument and, noting that its contents were flagrantly in violation of the rights of Costa Rica established in the Cañas-Jerez treaty, the Cleveland award, and the Central American Treaty of Washington, hastened to lodge with the Department of State of the United States, on February 21st, last, a protest in respectful but energetic terms against the action of the United States Senate (Appendix "O"). Nothing more could be done at the moment by a country that has at its command no other force than that of the law.

## 19.

## NICARAGUA PERSISTS IN HER SILENCE.

Although the treaty was not then covered by state secrecy, Nicaragua did not even then deign to communicate to Costa Rica anything in connection with the great problem that meant so much to her and to Costa Rica.

## NOTICE FROM THE UNITED STATES LEGATION IN COSTA RICA.

His Excellency Mr. E. J. Hale, Envoy Extraordinary and Minister Plenipotentiary of the United States of America in Costa Rica, did, however, on instructions from his Government, send to our Secretary of Foreign Relations, on the 21st of last February, a short note in which, assuming that Costa Rica was fully informed of what had transpired, he made known to our Secretary that the United States Senate, on the 18th of that month, by a vote of 55 to 18, adopted a resolution ratifying the Nicaraguan treaty, with two amendments of which he enclosed copies; he also enclosed copy of the following proviso in that resolution:

*"Provided, That whereas Costa Rica, Salvador, and Honduras have protested against the ratification of said Convention in the fear or belief that said Convention might in some respect impair existing rights of said States; therefore, it is declared by the Senate that in advising and consenting to the ratification of the said Convention as amended, such advice and consent are given with the understanding, to be expressed as a part of the instrument of ratification, that nothing in said Convention is intended to affect any existing right of any of the said named States."*

Mr. Hale concluded his communication by asking our Government to inform the press of Costa Rica of the action of the United States Senate in this regard (Appendix "P").

What Mr. Hale evidently did not know is that, when our Government received his note, it was wholly in the dark respecting the contents of that treaty.

My Government, of course, is profoundly appreciative of His Excellency's courteous deference towards it, but

naturally it notes with dismay that, in spite of the proviso enacted by the United States Senate—doubtless inserted with the intention of allaying the nervous excitement of Costa Rica, Salvador, and Honduras—the Bryan-Chamorro treaty is heavily charged with dangers for Central America, and especially for Costa Rica.

## JURISDICTION OF THE TRIBUNAL.

Article first of both the above-mentioned General Treaty of Peace and Friendship and of the Convention for the Establishment of a Central American Court of Justice, which was also entered into on the 20th of December, 1907, by the five States that formerly constituted the Federal Republic of the Center of America, confer jurisdiction of the present case upon the High Tribunal before which I have the honor to appear. (Appendices "E" with "D").

## COMPLAINT.

For the foregoing reasons, and after having exhausted the resources of diplomacy, I come before this Honorable Court and ask that, after due legal procedure, this Court will render a final judgment in the action here brought against the Most Excellent, the Government of the Republic of Nicaragua, as follows:

*First.*—That the Bryan-Chamorro treaty, to which paragraph 15 of the foregoing ARGUMENTS OF FACT relates, violates the rights of Costa Rica that were acquired under the Cañas-Jerez treaty, the Cleveland award, and the Central American Treaty of Washington, in that—

(a) Costa Rica was not consulted by Nicaragua in order to enter into that convention;

(b) The execution of that pact may deprive Costa Rica of her rights of free navigation in the San Juan River from its outlet in the Atlantic, up stream to

within three English miles of Castillo Viejo, and may prevent Costa Rican vessels in the merchant or fiscal service from touching at points on the northern banks of that river along the line indicated;

(c) The execution of the pact may also damage and diminish the Costa Rican shores of the said river along that line, as well as the mouths of the Costa Rican rivers that empty into the San Juan, and the lands about said shores and river mouths;

(d) The execution of the pact may also prejudice the co-ownership of Costa Rica in San Juan del Norte and Salinas Bay, and may nullify that co-ownership entirely;

(e) Because of the potential injuries indicated in (b), (c), and (d) the decisive opinion of Costa Rica is necessary and indispensable to the perfecting of the pact, and that opinion has neither been given or asked for; and

(f) The pact, with regard to the leasing to the United States of Nicaraguan territory for a naval base in the Gulf of Fonseca, and of Great Corn Island and Little Corn Island which Nicaragua possesses in the Caribbean Sea, makes no reservation whatever in favor of Costa Rica, whose vessels possess, in all the maritime waters, coasts and ports of Nicaragua, the right to be treated as national vessels of Nicaragua—an omission which *ipso facto* renders nugatory Article IX of the Central American Treaty of Washington.

*Second.*—That the violation of Costa Rica's rights in the particulars above set forth, or in any one of them, renders the said Bryan-Chamorro pact void, particularly in view of the fact that when it was signed both contracting parties well knew of Nicaragua's lack of legal capacity to sign unrestrictedly; that is, they knew of Nicaragua's incapacity to sign without holding harmless the rights which Costa Rica possesses in the waters and territories that are involved in the convention, and

*Third.*—That the acts and omissions set forth in the two preceding points render the said Bryan-

Chamorro treaty null and void and without effect, especially with respect to Costa Rica, and the Court hereby declares and adjudges said treaty to be null and void and without effect.

### INTERLOCUTORY PETITION.

Under the authority of Article XVIII of the convention creating this supreme tribunal, I respectfully pray that an immediate decision be rendered in this action in order to prevent dangers and conflicts that may perhaps be irreparable later, and that, pending such decision, the court will issue an appropriate decree—\*

(A) Ordering, with relation to a canal across Nicaraguan territory, and with relation to anything that may interfere generally with the navigation of the waters of that republic, that the *status quo* of the right that existed in Costa Rica prior to the Bryan-Chamorro treaty that gives rise to this action be maintained, and

(B) Directing that, in view of the urgency of the matter, a communication be sent by telegraph to the Most Excellent, the Governments of Nicaragua and the United States of America, to be followed immediately by confirmation by mail, notifying them, with all due formality, of the institution of this action and of the decree prayed for in the preceding paragraph (A), if, as I venture to hope, my prayer for such precautionary measure shall be acceded to.

### ENUMERATION OF APPENDICES.

The following documents are made a part hereof:

"A." My credentials as special counsel.

"B." The Cañas-Jerez treaty.

"C." The Esquivel-Román convention.

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\*Since this translation was started the Central American Court of Justice has passed upon this interlocutory petition, and, on the first of May, rendered the decision which is herein printed in full at page 37.

"CH." Translation of article in *La Gaceta* (official daily of Costa Rica) of April 15, 1888, containing the Cleveland award.

"D" with "E." The General Treaty of Peace and Friendship of December 20, 1907, between the republics of Central America.

"E" with "D." The convention of December 20, 1907, creating the Central American Court of Justice.

"F." The protest of April 27, 1913, from the Costa Rican Minister in Nicaragua before the Foreign Office of that Republic.

"G." The protest of April 17, 1913, from the Costa Rican Minister in the United States before the State Department of that country.

"H." Nicaragua's reply of June 12, 1913.

"I." Inquiry addressed on July 30, 1913, by the Costa Rican Minister in Nicaragua to the Foreign Office of that Republic. This Appendix is on page 103 of the Report on the Foreign Relations of Nicaragua that constitutes Appendix "K."

"J." Reply of August 4, following.

"K." Report on the Foreign Relations of Nicaragua, Managua, 1914, in which, at pages 98 to 105, will be found the notes referred to in paragraphs "f," "k," "i," and "j" hereof.

"L." Article published in *La República*, a newspaper of this city (San José de Costa Rica), No. 8810, of July 4, 1913, reproducing Chamorro-Weitzel treaty.

"LL." Statement of Mr. John N. Popham before the Committee on Foreign Relations of the United States Senate, dated July 10, 1914.

"M." The note of February 2, last, from our Minister at Washington to the United States Department of State.

"N." Memorandum of Harry W. Van Dyke, Esquire, undated, and printed in Washington February 1st, last.

"Ñ." Excerpt from *Congressional Record*, No. 49, of February 18th, last, containing Senate's resolution ratifying Bryan-Chamorro treaty.

"O." Protest addressed on February 21st, last, by Costa Rican Legation in Washington, to United States Department of State.

"P." Note, addressed on that day, by the United States Legation at this capital, to our Department of Foreign Relations.

### COPIES.

I transmit herewith the necessary copies of this complaint and the Appendices.

### NOTICES.

My domicile is in this city, where I have my office, to which may be addressed the notices from this Honorable Court.

Central American Court of Justice.

SAN JOSE DE COSTA RICA,  
March 24, 1916.

LUIS CASTRO UREÑA.

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*The Most Excellent,*

*The Central American Court of Justice:*

(COSTA RICA v. NICARAGUA.)

I, the attorney for the plaintiff in this action, respectfully inform the Court:

#### I.

That I present herewith, as Appendix "Q," an authentic copy of the original text of the Cleveland award.

## II.

That whereas, after the presentation of my Complaint, there appeared in *La Gaceta* (Costa Rican Official Gazette) of March 29th, last, the reply of the Department of State of the United States to the protests of Costa Rica that had been lodged with that Government, I present herewith a copy of the said gazette for purposes which I shall hereafter explain, and mark the same "Appendix 'R.'"

Central American Court of Justice.

SAN JOSÉ, *April 5, 1916.*

LUIS CASTRO UREÑA.

## RESOLUTION OF THE COURT ON THE INTER-LOCUTORY PETITION CONTAINED IN THE COMPLAINT.

### CENTRAL AMERICAN COURT OF JUSTICE.

San José de Costa Rica, May first, nineteen hundred and sixteen, at six o'clock, post meridian.

#### WHEREAS,

The Government of Costa Rica, by the Licentiate Luis Castro Ureña, has presented a formal complaint against the Government of Nicaragua, charging the latter with having entered into a treaty relating to an interoceanic canal and subscribed by that Republic and the Republic of the United States of America, and alleging that that pact is a violation of the Cañas-Jerez treaty, the Cleveland award, and the General Treaty of Peace and Amity signed at Washington in nineteen hundred and seven; and

#### CONSIDERING:

*First.*—That the Court has jurisdiction of all questions or controversies arising between the Central American

States, of whatsoever nature or origin, in cases in which the Chancelleries of the respective States may not have been able to reach a settlement (Article I of the treaty creating this Tribunal);

*Second.*—That in the present case the subject-matter, or cause of action, is properly within the ordinary jurisdiction of the Court, since it relates to a controversy between two of the High Signatory Parties to the Treaties of Washington, which parties, in the pursuit of peace and harmony, solemnly agreed to submit their differences or difficulties to this permanent Court of Justice for decision;

*Third.*—That the High Party Complainant herein has complied with the requirements prescribed in Article XIV of the respective treaty by filing with its complaint—which, in its turn, sets forth the points of fact and law relied on in the case—all pertinent evidence in the form prescribed in Article 7 of the Ordinances;

*Fourth.*—That with reference to the requirement that the States must resort to diplomatic parleys, or discussions, as prerequisites to judicial action, to the end that an amicable settlement may be reached, the Court finds, from the facts so far presented, that that requirement has been fulfilled. The evidence filed with the complaint shows that the Costa Rican Government demanded of the Nicaraguan Government the observance of its right to be consulted regarding any agreement relating to an inter-oceanic canal, and gave notice that, without such prerequisite, the powers thereunto given by existing treaties would be considered to be infringed. The Government of Nicaragua rejected the demand made upon it and claimed that the matter of the conclusion of a canal treaty, the construction of which would only affect waters and lands of its own ownership, was exclusively within its own sovereign powers. Discussion of this point was commenced, but was brought to an abrupt close by Nicara-

gua's refusal to disclose any information concerning the negotiations to the complainant Government; she declared repeatedly that considerations of an international character forced her to treat the convention entered into as secret, thus not only shutting off the possibility of a settlement of opposing interests, but preventing any intelligent discussion of the matter, and left the Government of Costa Rica no other recourse but that of presenting its formal protest.

*Fifth.*—That Article 6 of the Ordinances, and 17 of the first paragraph of the Regulations, give a logical development and application of the abstract and general principle laid down in Article I of the Treaty, and leave to the judgment of the Court, in each case that comes before it, the question whether the complaining State did or did not make efforts tending towards diplomatic discussion, although it is impossible to establish a fixed and inflexible criterion for all classes of litigation. And this theory comports with the jurisprudence controlling the Central American Court, which upholds the doctrine, "That the reservation contained in the Article under discussion has for its object to safeguard the right of the States to terminate their controversies by an amicable understanding, notwithstanding their agreement to submit them to the Court; but it is not intended to establish the irrevocable condition that such recourse, once undertaken, must be exhausted \* \* \*" (Decision of December 19, 1909);

*Sixth.*—That the notes emanating from the Ministry of Foreign Relations of Nicaragua and addressed to the Costa Rican Department of Foreign Relations, and transcribed to this Court, clearly disclose the fact that the High Party Defendant denies the competency of this Court to take cognizance of this action, and maintains that the action is unfounded; but many of its allegations involve peremptory exceptions foreign to the issue which

it is impossible to decide without full argument between the High Parties in which their rights shall be completely set forth;

*Seventh.*—That with reference to the interlocutory petition that accompanies the complaint, the Court can properly decide the point relating to the maintenance of the *status quo* between the Republics of Costa Rica and Nicaragua; but not the point relating to the notification of the Government of the United States, because that Government is not a party to this litigation (Article XVIII of the Treaty);

Wherefore, in conformity with the doctrines invoked, with Articles 19, 22, and 23 of the Convention, and 57 and 58 of the Ordinances, and 16 of the Regulations, and by a majority of votes against the dissent of the Honorable Judge for Nicaragua, who is filing a separate opinion setting forth the reasons for his decision,

#### IT IS RESOLVED:

That the complaint presented by the Government of Costa Rica be admitted; that the Licentiate Luis Castro Ureña be recognized as the representative of the Complainant Government; that the Defendant Government be notified and called upon to answer the complaint within sixty days from the date on which notice of the complaint shall have been received by His Excellency the Minister of Foreign Relations of the Republic of Nicaragua, to whom, also, shall be sent, through the medium of a note, copies of the petition of complaint, of the evidence presented and of this decision; and that the following precautionary measure (*medida precautoria*) be decreed: The Governments of Costa Rica and Nicaragua are under the obligation to maintain the *status quo* that existed between them prior to the Treaty that gave rise to the present controversy.

Let this decision be notified to the Defendant Government and the other signataries of the Treaty creating this Court, through the means and in the form, indicated in the third paragraph of Article 57 of the Ordinances.

M. CASTRO R.

NICOLÁS OREAMUNO.

DANIEL GUTIÉRREZ NAVAS.

SATURNINO MEDAL.

ANGEL M. BOCANEGRA.

MANUEL ECHEVARRÍA, *Secretary*.



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APPENDICES

TO THE

COMPLAINT OF THE REPUBLIC OF COSTA RICA  
GROWING OUT OF A CONVENTION ENTERED  
INTO BY THE REPUBLIC OF NICARAGUA WITH  
THE REPUBLIC OF THE UNITED STATES OF  
AMERICA FOR THE SALE OF THE SAN JUAN  
RIVER AND OTHER MATTERS.

(PRINTED AT THE NATIONAL PRINTING OFFICE  
SAN JOSÉ, COSTA RICA.)

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TRANSLATION

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## APPENDIX A.

MANUEL CASTRO QUESADA, Secretary of State for Foreign Relations,

CERTIFIES, That at page 129 of the appropriate book appear the resolution and act of acceptance that read as follows: "No. 132. San José, August 14, 1914. The President of the Republic

RESOLVES: To designate the Licentiate don Luis Castro Ureña to act as the representative of the Costa Rican Government in preparing and filing with the Central American Court of Justice a complaint against the Government of Nicaragua based upon the failure of that Government to recognize the rights of this Republic in connection with the treaty entered into with the United States for the construction of an interoceanic canal by way of the San Juan River, or Nicaraguan territory generally. Let this be communicated. González, the Secretary of State for Foreign Relations, Castro Quesada." Department of Foreign Relations, San José, August 14, 1914. Don Luis Castro Ureña, of full age, lawyer, and domiciled here, appeared and accepted the employment to which he had been appointed by the foregoing resolution; he thereupon took the oath and signed his name. Manuel Castro Quesada. Luis Castro Ureña."

Given at the city of San José, August 18, 1914.

MANUEL CASTRO QUESADA.

[SEAL.]

## APPENDIX B.

### TREATY OF TERRITORIAL LIMITS BETWEEN NICARAGUA AND COSTA RICA, APRIL 15, 1858.

We, Máximo Jerez, Minister Plenipotentiary of the Government of the Republic of Nicaragua, and José María Cañas, Minister Plenipotentiary of the Government of Costa Rica, having been entrusted by our Governments with the mission of adjusting a treaty of limits between the two republics, which should put an end to all the differences which have obstructed the perfect understanding and harmony that must prevail among them for their safety and prosperity, and having exchanged our respective powers, which were examined by The Honorable, Señor Don Pedro R. Negrete, Minister Plenipotentiary of the Government of the Republic of Salvador, exercising the functions of fraternal mediator in these negotiations, who found them to be good and in due form, as we on our part also found good and in due form the powers exhibited by the said minister, after having discussed with the necessary deliberation all the points in question, with the assistance of the representative of Salvador who was present, have agreed to and adjusted the following Treaty of Limits between Nicaragua and Costa Rica.

\* \* \* \* \*

“ART. 6. The Republic of Nicaragua shall have exclusive dominion and the highest sovereignty over the waters of the San Juan River from their issue out of the lake to their discharge into the Atlantic; but the Republic of

Costa Rica shall have in those waters perpetual rights of free navigation from the said mouth of the river up to a point three English miles below Castillo Viejo, for purposes of Commerce, whether with Nicaragua or with the interior of Costa Rica, over the San Carlos or Sarapiquí rivers or any other course starting from the part which has been established as belonging to that republic on the banks of the San Juan. The vessels of either country may touch at any part of the banks of the river, where the navigation is common without paying any dues except such as may be established by agreement between the two Governments.

\*            \*            \*            \*            \*            \*            \*

“ART. 8. If the contracts for canalization or transit entered into before the Nicaraguan Government had knowledge of this convention should for any cause cease to be in force, Nicaragua agrees not to conclude any others relating to the objects above stated without first hearing the opinion of the Costa Rican Government respecting the disadvantages that may result to the two countries, provided that opinion be given within thirty days after the request therefor shall have been received, in case that the Nicaraguan Government should indicate that a decision is urgent; and in the event that the enterprise should cause no injury to the natural rights of Costa Rica, that opinion shall be advisory.”

\*            \*            \*            \*            \*            \*            \*

In testimony whereof we have hereunto subscribed our names and signed this, in triplicate, in the presence of the Honorable, the Minister of Salvador, under the countersign of the respective Secretaries of Legation, in

the city of San José, the capital of Costa Rica, on the 15th day of April, in the year of Our Lord, 1858.

MÁXIMO JEREZ,  
JOSÉ M. CAÑAS,  
PEDRO RÓMULO NEGRETE.

MANUEL RIVAS,  
*Secretary of Legation of Nicaragua.*

SALVADOR GONZÁLEZ,  
*Secretary of Legation of Costa Rica.*

FLORENTÍN SUAZO,  
*Secretary of Legation of Salvador.*

TOMÁS MARTÍNEZ,

*President of the Republic of Nicaragua,*

Inasmuch as General Máximo Jerez, Minister Plenipotentiary and Envoy Extraordinary of the Republic of Nicaragua to the Republic of Costa Rica, has negotiated, agreed to and signed, on the 15th day of the present month a treaty of limits that conforms in its entirety with the bases laid down for him in his instructions, and the said treaty is found to be reciprocally conducive to the peace and prosperity of both countries, and removes all obstacles that might obstruct the mutual alliance and unity of action against all attempts at conquest; and inasmuch as the Government is duly authorized to do what it deems best for the security and independence of the Republic, by virtue of the legislative decree of February 26, last, and by virtue of the reservation of powers mentioned in the governmental decree of the 17th instant,

Ratifies in all its parts and in each of its articles the treaty of limits entered into by the Minister Plenipotentiary, Don José María Cañas, for the Most Excellent

Government of Costa Rica, and Don Máximo Jerez, Minister Plenipotentiary for the Supreme Government of Nicaragua, signed on the 15th of the present month and ratified on the 16th by that Government, together with the additional act of the same date.

Given at Rivas, the twenty-sixth of the month of April, eighteen hundred and fifty-eight.

TOMÁS MARTÍNEZ,  
GREGORIO JUÁREZ,

*Secretary.*

[SEAL.]

## EXCHANGE OF RATIFICATIONS.

Juan Rafael Mora, President of the Republic of Costa Rica, and Tomás Martínez, President of the Republic of Nicaragua, duly authorized, respectively, by the Congresses of Costa Rica and Nicaragua to exchange ratifications of the Treaty of Territorial Limits (heretofore signed by plenipotentiaries of the two republics, as well as by that of the Republic of Salvador as mediatory power, on the 15th of April, of the present year, at San José, capital of Costa Rica, said plenipotentiaries having been, on the part of Costa Rica, General José María Cañas; on the part of Nicaragua, General Máximo Jerez, and on the part of Salvador, Colonel Pedro Rómulo Negrete), have met in the city of Rivas in Nicaragua for the purpose stated, and have perfected and verified the exchange of the respective official instruments of ratification of the said treaty of April 15th, and have affixed our signatures in triplicate to this act of exchange, verified by the undersigned Ministers of Foreign Relations of Costa Rica and Nicaragua, Dr. Don Nazario Toledo and Licentiate Don

Gregorio Juárez, this twenty-sixth day of the month of April in the year eighteen hundred and fifty-eight.

JUAN MORA.

NAZARIO TOLEDO,

*Minister of State for  
Foreign Relations.*

TOMÁS MARTÍNEZ.

GREGORIO JUÁREZ,

*Minister of State for  
Foreign Relations.*

THE CONSTITUENT ASSEMBLY OF THE REPUBLIC OF  
NICARAGUA,

*In the exercise of the legislative powers with which it is  
invested,*

DECREES:

Sole article.—That the treaty of limits entered into in the city of San José on the 15th of April of the present year, by Ministers Plenipotentiary, General Don Máximo Jerez, on the part of this Republic, and General Don José María Cañas, on the part of Costa Rica, with the intervention of the Minister Plenipotentiary of the Government of Salvador, Colonel Don Pedro Rómulo Negrete, be approved.

To the Executive Power. Given in the Hall of Sessions of the Constituent Assembly in Managua, May 28, 1858. Hermenegildo Zepeda, D. N. P.; José A. Mejía, D. S., J. Miguel Cárdenas, D. S.

Wherefore, let it be executed.

National Palace, Managua, June 4, 1858. Tomás Martínez. (*Gaceta* (Official Gazette) of Nicaragua, July 3, 1858.)

## APPENDIX C.

### ARBITRAL CONVENTION ENTERED INTO BETWEEN NICARAGUA AND COSTA RICA.

1887.

THE PRESIDENT OF THE REPUBLIC TO THE PEOPLE,

*Be it known:*

That the Congress has ordered the following:

The Senate and Chamber of Deputies of the Republic of Nicaragua

#### DECREE:

That the treaty be ratified in all its parts which was entered into in Guatemala on the 24th of last December between the Nicaraguan and Costa Rican Plenipotentiaries, with the intervention of the Minister of Foreign Relations of the first-named republic, which treaty comprises eleven articles that read literally as follows:

The Governments of the Republics of Nicaragua and Costa Rica, animated by the desire to put an end to the question that has been debated between them since 1871, that is, whether or not the treaty signed by them on the 15th of April, 1858, is valid, have appointed, respectively, as their plenipotentiaries, Señor Don José Antonio Román, Envoy Extraordinary and Minister Plenipotentiary of Nicaragua before the Government of Guatemala, and Señor Don Ascensión Esquivel, Envoy Extraordinary and Minister Plenipotentiary of Costa Rica before the same Government, who, after exhibiting their full powers that were found to be in due form, and discussing, with the intervention of the Minister of Foreign Relations of the Republic of Guatemala, Dr. Don Fernando Cruz, who was designated by his Government to use the

good offices of his Government generously tendered to the contending parties and by them gratefully accepted, have agreed to the following articles:

#### ARTICLE 1.

The question pending between the contracting Governments relating to the validity of the Treaty of Limits of April 15, 1858, is hereby submitted to arbitration.

#### ARTICLE 2.

The President of the United States of America shall be the arbitrator of this question.

Within sixty days after the exchange of ratifications of the present convention, the contracting Governments shall ask the arbitrator named herein to accept the office.

\* \* \* \* \*

#### ARTICLE 6.

If the arbitral award shall uphold the validity of the treaty, the same decision shall declare whether Costa Rica possesses the right to navigate the San Juan River with vessels of war or the revenue service. It shall also decide, in the event the said treaty be held valid, all the other points of doubtful interpretation that may be found by either of the parties in the treaty and that are notified to the other within thirty days from the exchange of ratifications of the present convention.

#### ARTICLE 7.

The arbitral award, whatever it may be, shall be held by the contracting parties to be a perfect and obligatory treaty, it shall admit of no recourse whatsoever and its execution shall commence thirty days after having been notified to the two governments or their representatives.

\* \* \* \* \*

## ARTICLE II.

This treaty must be submitted for ratification by the executive and congress of each of the contracting republics, and their ratifications shall be exchanged at Managua or San José de Costa Rica on the 30th of June, next, or before then if possible.

In testimony whereof the plenipotentiaries, and the Minister of Foreign Relations of Guatemala, have hereunto signed their names and affixed their private seals, at the city of Guatemala this twenty-fourth day of December, eighteen hundred and eighty-six. J. Anto. Román. Ascensión Esquivel. Fernando Cruz.

The Government, in view of the convention entered into between Nicaragua and Costa Rica, through the medium of their plenipotentiaries—for Nicaragua, Señor Don José Antonio Román, and for Costa Rica, Señor Licentiate Don Ascensión Esquivel—with the mediation of the Government of Guatemala, and dated at the capital of the latter country the 24th of December, 1886, has ratified the same.

Managua, January 28, 1887. Cárdenas. The Minister of Foreign Relations, Joaqn. Elizondo.

Agreed to, Managua, February 11, 1887, Joaqn. Elizondo.

Given in the Hall of Sessions of the Senate, Managua, March 28, 1887. Joaquín Zavala. S. Morales. Francisco Jiménez.

To the Executive Power. Hall of Sessions of the Chamber of Deputies. Managua, April 24, 1887. Tomás Armijo. Luis E. Sáenz. Leopoldo M. Montenegro.

Wherefore: let it be executed.

Managua, April 26, 1887.

E. CARAZO.

JOAQN. ELIZONDO,

*Minister of Foreign Relations.*

(Two seals.)

## EXCHANGE OF RATIFICATIONS.

The undersigned, Faustino Víquez, Plenipotentiary appointed *ad hoc* to verify on the part of the Government of Costa Rica the exchange of ratifications of the arbitral convention entered into at Guatemala on the 24th day of December of last year, between the plenipotentiaries of that republic and Nicaragua, with the amicable mediation of the Government of Guatemala, and Federico Solórzano, Plenipotentiary of Nicaragua, appointed for a similar purpose, having examined our respective full powers, which we find to be in good and due form, have carefully compared the said ratifications and found them exact, and we hereby verify the exchange in the customary form.

In testimony whereof we sign both in the same tenor at the city of Managua, the first of June, eighteen hundred and eighty-seven.

(Two seals.)

FAUSTINO VÍQUEZ,  
FEDERICO SOLÓRZANO.

## APPENDIX CH.

### AWARD OF THE ARBITRATOR, THE PRESIDENT OF THE UNITED STATES, UPON THE VALIDITY OF THE TREATY OF LIMITS OF 1858 BETWEEN NICARAGUA AND COSTA RICA.\*

*Grover Cleveland, President of the United States, to whom it concern, greeting:* The functions of arbitrator having been conferred upon the President of the United States by virtue of a treaty signed at the City of Guatemala on the 24th day of December, one thousand eight hundred and eighty-six, between the Republics of Costa Rica and Nicaragua, whereby it was agreed that the question pending between the contracting Governments in regard to the validity of their Treaty of Limits of the 15th day of April, one thousand eight hundred and fifty-eight, should be submitted to the arbitration of the President of the United States of America; that if the arbitrator's award should determine that the treaty was valid, the same award should also declare whether Costa Rica has the right of navigation of the river San Juan with vessels of war or of revenue service; and that in the same manner the arbitrator should decide, in case of the validity of the treaty, upon all the other points of doubtful interpretation which either of the parties might find in the treaty and should communicate to the other party within thirty days after the exchange of the ratifications of the said treaty of the 24th day of December, one thousand eight hundred and eighty-six.

And the Republic of Nicaragua having duly communicated to the Republic of Costa Rica eleven points of doubtful interpretation found in the said Treaty of Limits of the 15th day of April, one thousand eight hundred and

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\*Foreign Relations of the United States, Part I, pages 456, 457, 458, 459.

fifty-eight; and the Republic of Costa Rica having failed to communicate to the Republic of Nicaragua any points of doubtful interpretation found in the said last-mentioned treaty;

And both parties having duly presented their allegations and documents to the arbitrator, and having thereafter duly presented their respective answers to the allegations of the other party as provided in the treaty of the 24th day of December, one thousand eight hundred and eighty-six;

And the arbitrator pursuant to the fifth clause of said last-named treaty having delegated his powers to the honorable George L. Rives, Assistant Secretary of State, who, after examining and considering the said allegations, documents and answers, has made his report in writing thereon to the arbitrator;

Now, therefore, I, Grover Cleveland, President of the United States of America, do hereby make the following decision and award:

*First.* The above-mentioned Treaty of Limits, signed on the 15th day of April, one thousand eight hundred and fifty-eight, is valid.

*Second.* The Republic of Costa Rica under said treaty and the stipulations contained in the sixth article thereof, has not the right of navigation of the River San Juan with vessels of war; but she may navigate said river with such vessels of the revenue service as may be related to and connected with her enjoyment of the "purposes of commerce" accorded to her in said article, or as may be necessary to the protection of said enjoyment.

*Third.* With respect to the points of doubtful interpretation communicated as aforesaid by the Republic of Nicaragua, I decide as follows:

1. The boundary line between the Republics of Costa Rica and Nicaragua, on the Atlantic side, begins at the extremity of Punta de Castilla at the mouth of the San

Juan de Nicaragua River, as they both existed on the 15th day of April, 1858. The ownership of any accretion to said Punta de Castilla is to be governed by the laws applicable to that subject.

2. The central point of the Salinas Bay is to be fixed by drawing a straight line across the mouth of the bay and determining mathematically the center of the closed geometrical figure formed by such straight line and the shore of the bay at low-water mark.

3. By the central point of Salinas Bay is to be understood the center of the geometrical figure formed as above stated. The limits of the bay towards the ocean is a straight line drawn from the extremity of Punta Arranca Barba, nearly true south to the westernmost portion of the land about Punta Sacate.

4. The Republic of Costa Rica is not bound to concur with the Republic of Nicaragua in the expenses necessary to prevent the bay of San Juan del Norte from being obstructed; to keep the navigation of the river or port free and unembarrassed, or to improve it for the common benefit.

5. The Republic of Costa Rica is not bound to contribute any proportion of the expenses that may be incurred by the Republic of Nicaragua for any of the purposes above mentioned.

6. The Republic of Costa Rica can not prevent the Republic of Nicaragua from executing at her own expense and within her own territory such works of improvement, *provided* such works of improvement do not result in the occupation or flooding or damage of Costa Rican territory, or in the destruction or serious impairment of the navigation of the said river or any of its branches at any point where Costa Rica is entitled to navigate the same. The Republic of Costa Rica has the right to demand indemnification for any places belonging to her on the right bank

of the River San Juan which may be occupied without her consent, and for any lands on the same bank which may be flooded or damaged in any other way in consequence of works of improvement.

7. The branch of the River San Juan known as the Colorado River must not be considered as the boundary between the Republics of Costa Rica and Nicaragua in any part of its course.

8. The right of the Republic of Costa Rica to the navigation of the River San Juan with men-of-war or revenue-cutters is determined and defined in the second article of this award.

9. The Republic of Costa Rica can deny to the Republic of Nicaragua the right of deviating the waters of the River San Juan in case such deviation will result in the destruction or serious impairment of the navigation of the said river or any of its branches at any point where Costa Rica is entitled to navigate the same.

10. The Republic of Nicaragua remains bound not to make any grants for canal purposes across her territory without first asking the opinion of the Republic of Costa Rica, as provided in Article VIII of the Treaty of Limits of the 15th day of April, one thousand eight hundred and fifty-eight. The natural rights of the Republic of Costa Rica alluded to in the said stipulation are the rights which, in view of the boundaries fixed by the said Treaty of Limits, she possesses in the soil thereby recognized as belonging exclusively to her; the rights which she possesses in the harbors of San Juan del Norte and Salinas Bay; and the rights which she possesses in so much of the river San Juan as lies more than three English miles below Castillo Viejo, measuring from the exterior fortifications of the said castle as the same existed in the year 1858; and perhaps other rights not here particularly specified. These rights are to be deemed injured in any case where the terri-

tory belonging to the Republic of Costa Rica is occupied or flooded; where there is an encroachment upon either of the said harbors injurious to Costa Rica; or where there is such an obstruction or deviation of the River San Juan as to destroy or seriously impair the navigation of the said river or any of its branches at any point where Costa Rica is entitled to navigate the same.

11. The Treaty of Limits of the 15th day of April, one thousand eight hundred and fifty-eight, does not give to the Republic of Costa Rica the right to be a party to grants which Nicaragua may make for interoceanic canals; though in cases where the construction of the canal will involve an injury to the natural rights of Costa Rica, her opinion or advice, as mentioned in Article VIII of the treaty, should be more than "advisory" or "consultative." It would seem in such cases that her consent is necessary, and that she may thereupon demand compensation for the concession she is asked to make; but she is not entitled as a right to share in the profits that the Republic of Nicaragua may reserve for herself as a compensation for such favors and privileges as she, in her turn, may concede.

In testimony whereof, I have hereunto set my hand and have caused the seal of the United States to be hereunto affixed.

Done in triplicate in the city of Washington, on the twenty-second day of March, in the year 'one thousand eight hundred and eighty-eight, and of the independence of the United States the one hundred and twelfth.

GROVER CLEVELAND.

By the President:

T. F. BAYARD,  
*Secretary of State.*

## APPENDIX D.

No. 2.

*The Constitutional Congress of the Republic of Costa Rica,*  
In accordance with paragraph 4 of Article 73, of the  
Constitution,

### DECREES:

Let the Treaty and Conventions of the following literal  
tenor be approved:

#### GENERAL TREATY OF PEACE AND AMITY.

The Governments of the Republics of Costa Rica, Guatemala, Honduras, Nicaragua, and Salvador, being desirous of establishing the foundations which fix the general relations of said countries, have seen fit to conclude a General Treaty of Peace and Amity which will attain said end, and for that purpose have named as delegates:

Costa Rica: Their Excellencies Doctor Don Luis Anderson and Don Joaquín B. Calvo.

Guatemala: Their Excellencies Doctor Don Antonio Batres Jáuregui, Doctor Don Luis Toledo Herrarte, and Don Víctor Sánchez Ocaña.

Honduras: Their Excellencies Doctor Don Policarpo Bonilla, Doctor Don Angel Ugarte, and Don E. Constantino Fiallos.

Nicaragua: Their Excellencies Doctors Don José Madriz and Don Luis F. Corea, and

Salvador: Their Excellencies Doctor Don Salvador Gallegos, Doctor Don Salvador Rodríguez González, and Don Federico Mejía.

By virtue of the invitation sent in accordance with Article II of the protocol signed at Washington on September 17, 1907, by the Plenipotentiary Representatives of the five Central American Republics, their Excellencies, the Representative of the Government of the United Mexican States, Ambassador Don Enrique C. Creel, and the Representative of the Government of the United States of America, Mr. Willaim I. Buchanan, were present at all the deliberations.

The Delegates, assembled in the Central American Peace Conference at Washington, after having communicated to one another their respective full powers, which they found to be in due form, have agreed to carry out the said purpose in the following manner:

#### ARTICLE I.

The Republics of Central America consider as one of their first duties, in their mutual relations, the maintenance of peace, and they bind themselves to always observe the most complete harmony, and decide every difference or difficulty that may arise among them, of whatsoever nature it may be, by means of the Central American Court of Justice, created by the Convention which they have concluded for that purpose on this date.

\* \* \* \* \*

#### ARTICLE IX.

The merchant ships of the signatory countries shall be considered upon the sea, along the coasts, and in the ports of said countries as national vessels, they shall enjoy the same exceptions, immunities, and concessions as the latter, and shall not pay other dues nor be subject to further taxes than those imposed upon and paid by the vessels of the country.

\* \* \* \* \*

Signed at the city of Washington on the twentieth day of December, one thousand nine hundred and seven.

LUIS ANDERSON	E. CONSTANTINO FIALLOS
J. B. CALVO	JOSÉ MADRIZ
ANTONIO BATRES JÁUREGUI	LUIS F. COREA
LUIS TOLEDO HERRARTE	SALVADOR GALLEGOS
VÍCTOR SÁNCHEZ O.	SALVADOR RODRÍGUEZ G.
POLICARPO BONILLA	F. MEJÍA
ANGEL UGARTE	

NATIONAL PALACE, SAN JOSÉ,

*January 22, 1908.*

The foregoing convention, being in conformity with the instructions given to the Delegates and entered into for the high advantages of the nation, is hereby approved and referred to the Constitutional Congress for the proper legal action.

GONZÁLEZ VÍQUEZ.

ANDERSON,

*Secretary of State for Foreign Relations.*

## APPENDIX E.

### CONVENTION FOR THE ESTABLISHMENT OF A CENTRAL AMERICAN COURT OF JUSTICE.

The Governments of the Republics of Costa Rica, Guatemala, Honduras, Nicaragua, and Salvador, for the purpose of efficaciously guaranteeing their rights and maintaining peace and harmony inalterably in their relations, without being obliged to resort in any case to the employment of force, have agreed to conclude a Convention for the constitution of a Court of Justice charged with accomplishing such high aims, and to that end, have named as Delegates:

Costa Rica: Their Excellencies Doctor Don Luis Anderson and Don Joaquín B. Calvo.

Guatemala: Their Excellencies Doctor Don Antonio Batres Jáuregui, Doctor Don Luis Toledo Herrarte, and Don Víctor Sánchez Ocaña.

Honduras: Their Excellencies Doctor Don Policarpo Bonilla, Doctor Don Angel Ugarte, and Don E. Constantino Fiallos.

Nicaragua: Their Excellencies Doctors Don José Madriz and Don Luis F. Corea, and

Salvador: Their Excellencies Doctors Don Salvador Gallegos, Doctor Don Salvador Rodríguez, and Don Federico Mejía.

By virtue of the invitation sent in accordance with article II of the protocol signed at Washington on September 17, 1907, by the Plenipotentiary Representatives of the five Central American Republics, their Excellencies, the Representative of the Government of the United Mexican States, Ambassador Don Enrique C. Creel, and the Representative of the United States of America, Mr. William I. Buchanan, were present at all the deliberations.

The Delegates assembled in the Central American Peace Conference at Washington, after having communicated to one another their respective full powers, which they found to be in due form, have agreed to carry out the said purpose in the following manner:

#### ARTICLE I.

The High Contracting Parties agree by the present convention to constitute and maintain a permanent tribunal which shall be called the "Central American Court of Justice," to which they bind themselves to submit all controversies or questions which may arise among them, of whatsoever nature and no matter what their origin may be, in case the respective Departments of Foreign Affairs shall not be able to reach an understanding.

\* \* \* \* \*

#### ARTICLE XVIII.

From the moment in which any suit is instituted against any one or more governments up to that in which a final decision has been pronounced, the court may at the solicitation of any one of the parties fix the situation in which the contending parties must remain, to the end that the difficulty shall not be aggravated and that things shall be conserved in *statu quo* pending a final decision.

\* \* \* \* \*

Signed at the city of Washington on the twentieth day of December, one thousand nine hundred and seven.

LUIS ANDERSON

J. B. CALVO

ANTONIO BATRES JÁUREGUI

LUIS TOLEDO HERRARTE

VÍCTOR SÁNCHEZ O.

POLICARPO BONILLA

ANGEL UGARTE

E. CONSTANTINO FIALLOS

JOSÉ MADRIZ

LUIS F. COREA

SALVADOR GALLEGOS

SALVADOR RODRÍGUEZ G.

F. MEJÍA

## TO THE EXECUTIVE POWER.

Given in the Hall of Sessions of the Congress. National Palace, San José, the twenty-fifth day of the month of February, nineteen hundred and eight.

FRANCISCO JIMÉNEZ O., *Vice-President*,  
B. CASORLA, *First Secretary*,  
F. MAYORGA R., *Second Secretary*.

## LET IT BE EXECUTED.

Given at the National Palace. San José, the twenty-eighth day of the month of February, nineteen hundred and eight.

CLETO GONZÁLEZ VÍQUEZ.

ANDERSON,

*Secretary of State for Foreign Relations.*

## APPENDIX F.

LEGATION OF COSTA RICA,  
MANAGUA, *April 27, 1913.*

MR. MINISTER: The news has reached my Government that during the past few days the Legislative Assembly of Nicaragua has given its high approval to a treaty which Your Excellency's Government has entered into with the Government of the United States of America relating to the construction of an interoceanic canal.

In view of the cordiality and consequent friendship of which so many proofs have been given us by the fraternal Government of Nicaragua, this news has caused profound surprise to my Government, because it involves a direct violation of the existing treaties that regulate the relations between our two countries.

Article 8th of the Treaty of April 15, 1858, and the interpretation given by President Cleveland, in the arbitral award of March 22, 1888, to the tenth point of doubtful understanding that was presented by Nicaragua in the arbitration which Costa Rica joined with her in submitting to the decision of that Exalted Judge, positively establish the inhibition resting upon the former to grant any concession relating to an interoceanic canal across her territory without previously hearing the opinion of the latter.

The omission of that indispensable step on the part of the Government of Nicaragua on the present occasion my Government conceives to be sufficient to vitiate and render wholly void the treaty in question, and these views have been transmitted to the American Government, before which, on this same day, formal protest has been made.

The intimate and binding community of interests involved for Costa Rica and Nicaragua by the construc-

tion of a canal in a frontier zone, would be more than a sufficient reason why neither of the two nations could, without serious discourtesy to the other, enter into a treaty for such a purpose. And if, as in the present case, in addition to these purely ethical reasons, there exists a solemn and mandatory agreement, Your Excellency will understand that my Government neither can nor should allow such absolute ignoring of its legitimate rights to pass in silence.

For the above reasons, and in fulfillment of instructions from my Government, and in its name, I have the honor to present—through the distinguished medium of Your Excellency—to the enlightened and illustrious Government of Nicaragua, formal protest against the unlawful conclusion and ratification of the treaty to which I have just referred.

I avail myself of this opportunity to reiterate to Your Excellency the assurances of my highest and most distinguished consideration.

F. CABEZAS GÓMEZ.

To His Excellency,

Señor DON DIEGO M. CHAMORRO,

*Minister of Foreign Relations of*

*The Republic of Nicaragua.*

(From the *Report on Foreign Relations of Costa Rica*, 1913, Expositive Part, p. IX.)

## APPENDIX G.

LEGATION OF COSTA RICA,  
WASHINGTON, *April 17, 1913.*

MR. SECRETARY: News has reached my Government, although informally, to the effect that during the last days of February last, a contract, entered into by the Governments of Nicaragua and of Washington for the construction of an interoceanic canal across Nicaragua, was submitted to the United States Senate for ratification.

That news, of necessity, caused profound surprise to my Government, because the negotiation therein involved cannot be carried into effect without flagrant violation of the existence of the clearest possible treaty agreements that inhibit Nicaragua's entry into any convention for interoceanic canalization without first consulting Costa Rica, in one case, and in another, without first securing her acquiescence.

Article 8th of the Treaty of Limits, concluded between Costa Rica and Nicaragua on the 15th of April, 1858, reads as follows:

"Art. 8. If the contracts for canalization or transit entered into before the Nicaraguan Government had knowledge of this convention should for any cause cease to be in force, Nicaragua agrees not to conclude any others relating to the objects above stated without first hearing the opinion of the Costa Rican Government respecting the disadvantages that may result to the two countries, provided that opinion be given within thirty days after the request therefor shall have been received, in case that the Nicaraguan Government should indicate that a decision is urgent; and in the event that the enterprise should cause no injury to the natural rights of Costa Rica, that opinion shall be advisory."

The arbitral award rendered by His Excellency Grover Cleveland, President of the United States of America, on the 22d of March, 1888, declares in its first finding that the said Treaty of Limits, of 1858, is valid, and then, interpreting the tenth of the eleven points of doubtful understanding submitted to him by Nicaragua in the controversy, decided as follows:

"10. The Republic of Nicaragua remains bound not to make any grants for canal purposes across her territory without first asking the opinion of the Republic of Costa Rica, as provided in Article VIII of the Treaty of Limits of the 15th day of April, one thousand eight hundred and fifty-eight. The natural rights of the Republic of Costa Rica alluded to in the said stipulation are the rights which, in view of the boundaries fixed by the said Treaty of Limits, she possesses in the soil thereby recognized as belonging exclusively to her; the rights which she possesses in the harbors of San Juan del Norte and Salinas Bay; and the rights which she possesses in so much of the river San Juan as lies more than three English miles below Castillo Viejo, measuring from the exterior fortifications of the said castle as the same existed in the year 1858; and perhaps other rights not here particularly specified. These rights are to be deemed injured in any case where the territory belonging to the Republic of Costa Rica is occupied or flooded; where there is an encroachment upon either of the said harbors injurious to Costa Rica; or where there is such an obstruction or deviation of the River San Juan as to destroy or seriously impair the navigation of the said river or any of its branches at any point where Costa Rica is entitled to navigate the same."

An examination of the above documents will convince Your Excellency that the Republic of Nicaragua was without legal capacity to enter into the convention in question, which is now before the Senate, and that that lack of capacity—solemnly declared, in 1888, as above

stated, by the President of the United States—fundamentally vitiates the negotiations.

But my Government is not only supported by incontrovertible reasons *de jure* in her opposition to the treaty; compelling and controlling reasons *de facto* force it into the controversy, for, as Your Excellency surely knows, it is wholly impossible to construct an interoceanic canal across Nicaragua without affecting, to a greater or less extent, the lands and waters of Costa Rica.

For the foregoing reasons, in obedience to instructions from my Government, and in its name, I have the honor formally to lodge, with great respect, through the medium of Your Excellency, a protest with the enlightened and justice-loving Government of the United States, against the perfecting of the convention for canal purposes to which I have above referred; and I rest in the confidence that the lofty sentiment of equity that always guides the Washington Government, will induce it, on this occasion, to resolve the question in perfect conformity with justice and in the traditional friendship with which Costa Rica has always been honored by the great American Nation.

I have the honor to reiterate to Your Excellency the assurances of my highest and most distinguished consideration.

J. B. CALVO.

To His Excellency,

WILLIAM JENNINGS BRYAN,

*Secretary of State of the*

*United States of America.*

## APPENDIX H.

MANAGUA, *June 12, 1913.*

MR. MINISTER: I have the honor to reply to the important note of April 24th, last, in which Your Excellency is pleased to inform me that the knowledge has reached your Government that the Legislative Assembly of Nicaragua has given its approval to a treaty, recently entered into between my Government and that of the United States, relating to the construction of an interoceanic canal.

Your Excellency states that, in view of the cordial and continuous friendship of which so many proofs have been given to your government by mine, the above news has caused profound surprise to your Government, since it involves a perfect violation of existing treaties that regulate the relations between our two countries.

In proof of this, your Excellency cites article VIII of the treaty of April 15, 1858, and what was decided by President Cleveland in his award of March 22, 1888, respecting point X of the points of doubtful interpretation presented by Nicaragua; and your Excellency asserts that these established conclusively the incapacity on the part of my Government to execute any concession relating to an interoceanic canal across its territory, without first hearing the opinion of Costa Rica; that the omission of this step, indispensable on Nicaragua's part, your Government conceives to be sufficient to render the treaty wholly void, and that your Government has so informed the United States Government before which it has lodged a formal protest.

Your Excellency goes on to say that the close and binding community of interests involved for the two countries by the construction of a canal on a frontier zone, should be more than enough in itself to prevent either, without

grave discourtesy towards the other, from secretly entering into a treaty for such purpose; and that if, as in the present case, in addition to these reasons, there exists a solemn and compelling agreement on the subject, my Government will understand that yours cannot, and should not, allow such an absolute ignoring of its legitimate rights to pass in silence.

Your Excellency concludes by presenting, in the name of your Government, formal protest against the unlawful conclusion of the treaty in question.

Acting under instructions from the President of the Republic, I have the honor to reply to your Excellency as follows:

The Government of Nicaragua exercised a right of incontestable sovereignty when it entered into the convention of February 8th, last, with the United States, which convention has been kept secret for reasons of an international character that affect not it alone; but declares in the most positive manner, that in entering into that pact, it has not ignored any right that belongs to Costa Rica, nor has it committed, as stated by your Excellency, any violation of the treaties existing between the two nations.

That convention is a contract that comprises various and transcendently important considerations in the political and economic life of Nicaragua, and in which that country has adhered strictly to her incontestable rights, unreservedly yet unselfishly. For it tends towards the realization of high interests and mutual advantages to the contracting countries; towards the economic development and vigorous impulse towards the prosperity of the country under a government of order and of law; towards procuring, as far as possible, the construction of an interoceanic canal through a route exclusively Nicaraguan, which, when the time comes, will be determined, together with the surrounding conditions, by the contract just concluded

and towards other advantages relating to public works and national welfare. For all this my Government strives through the convention in question, and under the further impulse of a just hope to achieve at once Nicaragua's position among the other peoples, having in mind the new and exceptional conditions that must accrue to those countries from the approaching opening of the great commercial highway at Panama and the possible construction of a canal through Nicaragua.

It is obvious; therefore, that neither Article VIII of the treaty of 1858, nor point X resolved by President Cleveland, in his award of 1888, which your Excellency cites as proof of Nicaragua's incapacity to enter into the said pact—although that instrument confines itself to the construction of a canal across territory exclusively Nicaraguan—are applicable in this case, since it merely deals with a preferential right, granted to the United States, to open an interoceanic passageway through a route to be designated out of national territory when it shall be decided to undertake the construction thereof, at which time the conditions under which the canal shall be constructed, operated and maintained will be determined by the contracting parties by a further convention or treaty.

The treaty of 1858, invoked by your Excellency, defines clearly and conclusively, in Article VI, Nicaragua's possession and rights over the San Juan River, when it declares that she exclusively possesses ownership and sovereign authority over its waters, from their issuance out of the lake, to their disembogement in the Atlantic; and the award of President Cleveland, also invoked by your Excellency, categorically and expressly confirms that possession and those rights, in its decision of point XI, submitted by this Government, and declares that Costa Rica has no right to be a party to the concessions which Nicaragua may make for interoceanic canal purposes.

In the presence of such explicit evidence, my Government is at a loss to understand how there can still be any discussion of the right possessed by Nicaragua, in her capacity of sole and absolute owner of the territory through which it is probable the work will be effected, to choose the person or persons, whether private corporations or governments, with whom she proposes or desires to contract for the possible construction of a canal which, in any event, will be embraced within her own territorial limits, and the course of which, and the conditions, have not yet been fixed, unless the "close and binding community of interests involved for the two countries by the construction of a canal on a frontier zone," of which Your Excellency speaks, is based on the inadmissible theory of co-sovereignty over such canal itself. This theory, of course, could not have been in Your Excellency's thoughts, since it is in open and irreconcilable conflict with the text of the treaty of 1858, that gives to Nicaragua the ownership and sovereign authority of the waters of the San Juan River, and with the Cleveland award, that denies to Costa Rica the right to be a party to canal concessions and that, in referring to compensation which the latter republic may claim for concessions asked of it in cases wherein the construction of such canal involves damages to its natural rights, declares that Costa Rica is not "entitled *as a right* to share in the profits that the Republic of Nicaragua may reserve for herself as a compensation for such favors and privileges as she, in her turn, may concede."

Therefore, dealing with a simple option for a canal concession, Nicaragua, as sole sovereign over the territory that will be the site of the great undertaking, is wholly within her incontestable rights in entering singly and alone into that engagement.

Your Excellency's protest is, therefore, unfounded, as is also that which your Government has lodged with the Government of the United States, according to your note, to which this is a reply.

With regard to the sentiments of confraternity which the Government of the Republic has always entertained for the Central American countries, it has on repeated occasions given eloquent proofs, even when dealing with this very matter of a canal. In 1877, for instance, without the intervention of treaties or positive obligations, the Nicaraguan Executive, moved solely by a high conception of sincere and practical Central Americanism, proposed at Washington, through the medium of its Minister, the illustrious citizen, Dr. Adán Cárdenas, that all the rights, privileges and powers relating to the canal and the use of ports and accessible places that were conceded to Nicaragua in the treaty then being negotiated, should be conceded also to the other Republics of Central America, and they were so set forth in Article VI of the counter-proposal made to the Government of the United States by that distinguished diplomat.

In view of the foregoing, I have no doubt that Your Excellency will realize that the ideas expressed in the note to which this is an answer are in every regard unreasonable, for, as has been shown by an abundance of reasons and arguments, when the convention in question was entered into, there was on the part of Nicaragua no violation of existing treaties nor discourtesy to Costa Rica, nor any disregard or forgetfulness of her legitimate rights. And the President of the Republic takes refuge in the conviction that, whatever may be the opinion of Your Excellency's Government in the matter, it will in no event cease to recognize the loyalty and good faith with which the Government of Nicaragua has always been actuated in its international relations, especially with the States

of Central America which, perhaps in the not distant future, may be called to unite in themselves a single nation.

I beg that Your Excellency will accept the assurances of my personal appreciation and high esteem.

DIEGO M. CHAMORRO.

To His Excellency,

DON FRANCISCO CABEZAS GÓMEZ,

*Minister of Costa Rica in Nicaragua.*

(From the *Report on Foreign Relations and Public Instruction* of Nicaragua, Managua, 1914, Vol. I, page 100.)

## APPENDIX I.

COSTA RICAN LEGATION,

MANAGUA, *July 30, 1913.*

MR. MINISTER: In obedience to instructions from my Government, I have the honor to hand Your Excellency herewith a copy of the newspaper *La República*, No. 8810, of July 4, 1913, published at the capital of Costa Rica, and in which is found the text of the convention between the United States and Nicaragua for the construction of a canal by way of the San Juan River.

In handing this to Your Excellency, permit me, in the name of my Government, to request that you answer categorically whether the text of said convention as therein published is authentic, as well generally as in each of its paragraphs, and, if not, that you make the appropriate corrections.

As this relates to a matter involving important interests that bind the two countries by virtue of international promises, my Government is confident that the Government of Your Excellency will in strict justice be pleased to make satisfactory reply to our request.

I reiterate to Your Excellency the assurances of my distinguished consideration and my personal esteem.

F. CABEZAS GÓMEZ.

To His Excellency,

Señor DON DIEGO M. CHAMORRO,

*Minister of Foreign Relations.*

(From the *Report on Foreign Relations and Public Instruction* of Nicaragua, Managua, 1914, Vol. I, page 103.)

## APPENDIX J.

August 4, 1913.

MR. MINISTER: Your Excellency, in your courteous note of July 30, ultimo, has been good enough to hand this Department a copy of *La República*, No. 8810, a newspaper published in San José de Costa Rica, and, referring to a convention concerning an interoceanic canal that is published in its pages, and that bears the names of the President of Nicaragua and his Minister of Foreign Relations, Your Excellency, in the name of your Government, asks this Department to state categorically whether the text of that convention is authentic, as well generally as in each of its paragraphs, and, if not, to make the appropriate corrections.

I regret to have to inform Your Excellency, in confirmation of the statements contained in my note of the 12th of last June, that, for considerations of an international character, that involve not alone my own Government, the latter is keeping secret the convention entered into with the United States on the 8th of last February; and that, since it relates to a pact not yet perfected, it is not proper for the Government of Nicaragua, on its part, for the reasons contained in its said note, to make any official declaration regarding any of the steps in such negotiations.

Deeply chagrined that the reasons set forth prevent my replying otherwise to your request, I take pleasure in renewing to Your Excellency the assurances of my highest appreciation.

DIEGO M. CHAMORRO.

To His Excellency,

Señor DON FRANCISCO CABEZAS GÓMEZ,

*Minister of Costa Rica in Nicaragua.*

(From the *Report on Foreign Relations and Public Instruction* of Nicaragua, Managua, 1914, Vol. I, page 104.)

## APPENDIX K.

(This is the *Report on Foreign Relations and Public Instruction* of Nicaragua, Managua, 1914, *Documents*, Vol. I, from which are taken Exhibits F, H, I, and J, appearing at pages 98 to 105 of the original.)

## APPENDIX L.

### TEXT OF THE CONVENTION BETWEEN THE UNITED STATES AND NICARAGUA FOR THE CONSTRUCTION OF A CANAL BY WAY OF THE SAN JUAN RIVER.

(As published in *La República*, No. 8810, of July 4, 1913, at San José de Costa Rica.)

### IS IT AN "OPTION" OR A DEFINITIVE TRANSACTION?

The following is the text of a convention entered into between the United States and Nicaragua, against which the Government of Costa Rica protests, and which is called a simple "option" by the Nicaraguan Government. It is published so that the Costa Rican people may have an exact knowledge of that transaction.

### CONVENTION.

The Government of the United States of America and the Government of Nicaragua being animated by the desire to strengthen their ancient and cordial friendship by the most sincere cooperation for all purposes of mutual advantage and interest to the two nations; and the Government of Nicaragua being desirous to promote in every way economic development and prosperity under orderly and lawful government and the maintenance of its rights as secured by the Washington Conventions; and the Government of the United States being in full sympathy with these aims and desiring to lend to the Government of Nicaragua all proper assistance in these matters and also in the furtherance of various public works and measures conducive to its welfare and economic

development; and it being the desire of both Governments to reaffirm the principle of the first paragraph of the Protocol of December 1, 1900, and to provide for the possible future construction of an interoceanic ship canal by way of the San Juan River and the Great Lake of Nicaragua or via any other route over Nicaraguan territory, whenever the construction of such canal shall be deemed conducive to the interests of both countries; and the Government of Nicaragua, wishing to facilitate in every way possible the successful construction, maintenance, and operation of such canal and also the maintenance and operation of the Panama Canal, the two Governments have resolved to conclude a convention to these ends, and have accordingly appointed as their plenipotentiaries, the Government of the United States, George T. Weitzel, Envoy Extraordinary and Minister Plenipotentiary of the United States of America; and the Government of Nicaragua, Diego Manuel Chamorro, Minister for Foreign Affairs of the Republic of Nicaragua, who, having exhibited to each other their respective full powers, found to be in good and due form, have agreed upon and concluded the following articles:

#### ARTICLE I.

The Government of Nicaragua grants in perpetuity to the Government of the United States the unencumbered exclusive rights necessary and convenient to the construction, operation, and maintenance of an interoceanic canal by way of the San Juan River and the Great Lake of Nicaragua, or by way of any other route over Nicaraguan territory, the details of the terms upon which such canal shall be constructed, operated, and maintained to be fixed by mutual consultation between the two Governments whenever the construction of such canal shall be decided upon.

## ARTICLE II.

In order to facilitate the protection of the Panama Canal and of the canal, canal route, and the rights contemplated by the present convention and also to enable the United States to take any measure or to assist the Government of Nicaragua in any measures necessary to the ends contemplated herein, the Government of Nicaragua hereby leases for ninety-nine years to the Government of the United States the islands in the Caribbean Sea known as Great Corn and Little Corn Islands and covenants that, at such time and at such place on the Gulf of Fonseca as the Government of the United States may designate, the Government of the United States shall have the right to establish, operate and maintain for ninety-nine years a naval base.

The Government of the United States shall have the option of renewing either or both of the above grants contained in this article upon the expiration of the ninety-nine years aforesaid.

## ARTICLE III.

The Government of Nicaragua hereby grants to the Government of the United States in perpetuity the right of ships of the merchant marine of the United States to engage in coastwise trade in Nicaragua, either by way of the aforementioned canal or otherwise, with a right to discharge or load in part or in whole at all Nicaraguan ports while engaged in any voyage on terms identical with those imposed on Nicaraguan citizens or vessels.

## ARTICLE IV.

In consideration of the foregoing stipulations and of the purposes of this convention, the Government of the United

States shall pay, for the benefit of the Government of Nicaragua, the sum of three million dollars (\$3,000,000), United States Gold Coin of the present weight and fineness, such payment to be made to a depository, an American banking corporation designated by the Secretary of State of the United States, and to be disbursed in the construction of public works or for the benefit of public education or the advancement of the welfare of Nicaragua in a manner to be determined by the two High Contracting Parties, all such disbursements to be made by orders drawn by the Minister of Finance of the Republic of Nicaragua and approved by the Secretary of State of the United States or by such person as he may designate.

The payment above referred to shall be made within one year from the date of the exchange of ratifications of this convention.

#### ARTICLE V.

This convention shall be ratified by the High Contracting Parties according to their respective laws, and the ratifications thereof shall be exchanged at Washington as soon as possible.

In faith whereof we, the respective plenipotentiaries, have hereunto affixed our hands and seals.

Done in duplicate in the English and Spanish languages at Managua, this eighth day of February, nineteen hundred and thirteen.

GEORGE T. WEITZEL. [SEAL]

DIEGO MANUEL CHAMORRO. [SEAL]

The President of the Republic, having examined the foregoing convention and finding it to be in accordance with the instructions given to the Plenipotentiary charged with its negotiation,

## BE IT RESOLVED,

That it be approved and submitted to the Assembly for action according to law. Executive Palace, Managua, February 9, 1913.

[SEAL]

A. DIAZ.

D. M. CHAMORRO,

*Minister of Foreign Relations.*

[SEAL]

\* \* \* \* \*

The Congress of Nicaragua, as is well known, ratified this contract in all its parts.

## APPENDIX LL.

STATEMENT OF JOHN N. POPHAM TO THE HONORABLE COMMITTEE ON FOREIGN RELATIONS OF THE SENATE IN SUPPORT OF THE GALLINGER RESOLUTION OF JUNE 29, 1914, FOR THE INVESTIGATION AND PROTECTION OF THE RIGHTS OF COSTA RICA AS AFFECTED BY THE PENDING NICARAGUAN TREATY.

SENATORS: My identity with the American interests in Costa Rica, as disclosed in my late letter to Senator Gallinger and printed in the Congressional Record of June 29, 1914, in conjunction with the Gallinger Resolution authorizing and directing the Committee on Foreign Relations to carefully investigate the question of the rights and interests of Costa Rica in the Nicaraguan Canal Route, and what bearing the pending treaty with Nicaragua may have upon such rights that they may be properly guarded and protected by the Senate in whatever action may be had upon said treaty, indicates quite clearly that I have enlisted as an American volunteer in the cause of the formal protest of Costa Rica, made by her Legation to our Department of State, April 17, 1913, and by a similar note presented to the Government of Nicaragua by her Legation at Managua, against the consummation of the pending Convention between the Government of the United States and the Government of Nicaragua; and my vindication in so doing rests upon the plighted faith of our Government and Nicaragua, of which the civilized world is cognizant, by which they solemnly pledged themselves not to do or attempt to do what they are now seeking to do by the sanction of the American Senate.

I do not deem it essential to my present purpose, or important to you, to review in detail the memoranda of events, differences and controversies between Nicaragua and Costa Rica leading up to this final protest of which

it is the prelude, because they were each and all merged in the solemn agreement made and entered into by both parties to submit the same to the arbitration of President Cleveland and which were finally adjudicated and determined in his award of March 22, 1888, known as the Award of President Cleveland in the Boundary Dispute between Costa Rica and Nicaragua.

This award was not made by Grover Cleveland in his individual capacity, but as President of the United States, the executive guardian of the Monroe Manifesto, and a conservator of peace among the nations of Central and South America; and he was chosen by both parties as such arbitrator because they believed on account of his exalted position and high personal character, that he would mete out to them even and exact justice upon all the questions submitted to him in that arbitration.

The integrity and justice of this award has never been questioned. It was a great work, admirably performed, and no doubt was very effective in averting a war between Nicaragua and Costa Rica. It was and is *res judicata* as to all the parties to the record, and the Government of the United States from the very nature of the case, is clothed with the responsibility to see that it is steadily maintained and observed. There is no power in this Government to alter that decree, nor in Nicaragua, nor in Costa Rica. That power rests alone in the united consent of the three governments.

That part of this award to which I especially call your attention and which the pending Convention with Nicaragua directly contravenes is as follows:

“10. The Republic of Nicaragua remains bound not to make any grants for canal purposes across her territory without first asking the opinion of the Republic of Costa Rica, as provided in Article VIII of the Treaty of Limits of the 15th day of April, one thousand eight hundred and fifty-eight. The natural

rights of the Republic of Costa Rica alluded to in the said stipulation are the rights which, in view of the boundaries fixed by the said Treaty of Limits, she possesses in the soil thereby recognized as belonging exclusively to her; the rights which she possesses in the harbors of San Juan del Norte and Salinas Bay; and the rights which she possesses in so much of the River of San Juan as lies more than three English miles below Castillo Viejo, measuring from the exterior fortifications of the said castle as the same existed in the year 1858; and perhaps other rights not here particularly specified. These rights are to be deemed injured in any case where the territory belonging to the Republic of Costa Rica is occupied or flooded; where there is an encroachment upon either of the said harbors injurious to Costa Rica; or where there is such an obstruction or deviation of the River San Juan as to destroy or seriously impair the navigation of the said river or any of its branches at any point where Costa Rica is entitled to navigate the same."

It does not require much legal acumen, I think, to understand why the gifted arbitrator should hold as he did, that "The Republic of Nicaragua remains bound not to make any grant for canal purposes across her territory without first asking the opinion of the Republic of Costa Rica, as provided in Article VIII of the Treaty of Limits of the 15th day of April, one thousand eight hundred and fifty-eight."

It was because he ascertained from the plats and surveys of the engineers in evidence before him that it was impossible to build and operate an interoceanic canal in Nicaragua without affecting Costa Rican land and waters, to which he calls attention in the award sufficiently to establish that fact beyond question. His award shows that the natural rights of these two republics are so distributed and interlaced within and about the territory which must be embraced in said waterway to make it available for the purpose of transportation, that it can

only be considered purchased, controlled or used otherwise than as a unit, resting in separate ownership, but one and inseparable as a waterway franchise.

Although the Government of the United States has had a jealous and watchful eye upon this waterway since the Resolution of 1835 passed the Senate, authorizing President Jackson to have it investigated to determine its feasibility as such, the first real negotiation for the control and construction of the same was initiated upon the acceptance and strength of the President Cleveland Award. It was pursuant to this award that the protocols of December 1, 1900, were signed by our Government, Nicaragua and Costa Rica, followed by negotiations for its acquirement and construction, by the terms of which Protocols Nicaragua was to receive \$6,000,000 and an annual rental of \$25,000 in gold, and Costa Rica \$1,500,000 in gold for their respective concessions. Negotiations advanced well nigh to a finality; surveys were made, treaties formulated, the Hepburn bill had passed the House and in the Senate, when all at once a new project appeared in the so-called Spooner Act—the alternative Panama Canal project; but that Act did not lose sight of the Nicaragua enterprise, and authorized and directed the President of the United States, in case the effort to obtain the property of the new Panama Canal Company and the control of the necessary territory and other necessary concessions from the Republic of Colombia should fail, then he was to return to the “first love,” resume negotiations with Costa Rica and Nicaragua and acquire the title to the route from them and proceed at once to construct the canal commonly known as the Nicaragua Route.

To the great disappointment of the Republics of Nicaragua and Costa Rica, the Panama Canal project prevailed and is now substantially completed. Still, it has come to us through great tribulations, in securing our

title to the Zone through and offshoot cleavage of the Colombian Government, causing a wound that may never fully heal, and now we are turning our attention toward the acquirement of the old Nicaraguan route, the only one now left between the two oceans available for the purpose, and are doing so without regard to treaty obligations and the solemn award of one of our own Presidents, and at the hazard of precipitating a war between Costa Rica and Nicaragua, to whom we owe the guarantees of protection and peace.

It is most natural now to ask why Costa Rica should be ignored by our Government and Nicaragua in the pending Convention.

She has expressed no unwillingness to cooperate with her sister owner in the waterway, in a Convention with our Government to give to it the total ownership or control of the same upon a just ratio of valuation, to be concluded simultaneously with a Convention made with Nicaragua for the same purpose.

She asks no more and she should not be required to take less, than what is nominated in the Treaty with Nicaragua long since made, and in the award of the President of the United States.

Has Costa Rica not a just right to complain that she has been left to learn through outside sources what should have been communicated to her through legitimate government channels, namely, that—

“The United States and Nicaragua have signed a convention giving to the former exclusive rights to an interoceanic canal across Nicaragua, without consulting or even informing the Government of Costa Rica.”

That—

“Said convention was ratified by the Congress of Nicaragua in secret session, and has not been published as yet, which is against the usual procedure in cases like this, and may be said against the law.”

Here, then, is a case, as she understands it, wherein one overpowering government proposes, by diplomatic indirection, or the exercise of unauthorized treaty power, to put it in its mildest form, to appropriate to herself the absolute control of a vast property interest of a friendly but weaker nation, without provocation, without compensation, without notice, or explanation, without purchase or negotiation and without paying the other joint owner anything for her interest therein, which means, under the circumstances, the virtual confiscation of that interest. Or to resolve it in another way. The great Government of the United States, in order to tie up in her strong hand the perpetual control of the only waterway between the two oceans that can ever come in competition with her own, at Panama, proposes to buy the joint interest of one of the owners therein and thus get such control of the whole property.

In this situation of affairs obviously the only course left for Costa Rica to pursue in the premises was to promptly present her remonstrance to our Department of State according to the custom of nations in such cases, against the perfection of this invasion of her just rights, and this she did through her duly accredited representatives in Washington on the 17th day of April, 1913, in due form, that part of which I deem essential to my purpose, I quote as follows:

“MR. SECRETARY: My Government has learned, although in an informal way, that during the latter part of February last there was submitted to the consideration of the Senate of the United States, a contract made between the Governments of Nicaragua and Washington for the construction of an interoceanic canal through the former Republic.

“Such information has caused great surprise to my Government, inasmuch as the transaction to which it refers could not have been carried out without a

flagrant violation of the clear treaties actually in force which prevent Nicaragua from entering into any interoceanic canal agreement without previously consulting Costa Rica in one instance, and without its consent in another."

\* \* \* \* \*

"My Government not only has incontrovertible reasons *de jure* for opposing the treaty, but powerful, inflexible reasons *de facto* also compel it to interfere in the matter, because, as Your Excellency undoubtedly knows very well, it is impossible from every point of view to build an interoceanic canal in Nicaragua without affecting Costa Rican lands and waters to a greater or less extent."

The inherent strength of this remonstrance of Costa Rica consists in the fact that it is supported by and in strict accord with the aforesaid award of President Cleveland to the binding force of which both the Government of the United States and the Government of Nicaragua are fully and finally committed, and by the force of which they are stopped under the well settled principles of law and equity from the exercise of any treaty power to the exclusion of Costa Rica over any part of the waterway in question.

It is plain that if the courts of the United States were open to Costa Rica for the adjudication of this question, they would afford her the relief to which she is entitled under said award, and why should not the forum of last resort to which she now comes, the Senate of the United States, afford her that relief in the maintenance of her rights under the same award?

I could not help thinking when I read the noble words of President Wilson as they appeared in his reported speech, delivered at Philadelphia on Independence Day, wherein he said that he was for the inviolability of international treaties, that he was willing to get anything for an Ameri-

can that money can buy except the rights of other men; that he would not encourage, but stop, if in his power, an American enterprise in foreign countries, particularly in those foreign countries which are not strong enough to resist us, which takes the shape of imposing upon and exploiting the masses of the people in such countries,—I could not help thinking, I repeat, what an excellent opportunity he now has to put those sentiments in practical operation.

They can be vindicated it seems to me no better than by stopping, as he may do, the further pursuit of a treaty policy or convention, that if persisted in threatens to become an element of deadly warfare between two nations now at peace with each other, that reopens with increased fury an old strife between them which a former President of the United States wisely adjusted and put to rest.

Treaties are to be held sacred and inviolate, he declares, but here is a convention pending that openly violates a treaty of long standing, that a President of the United States has held to be valid and inviolable. Here is an international award of a President of the United States based largely on said treaty, which is first assailed and impeached in its integrity and binding force by the Government that created it. In such a case the superior strength of this Government is its weakness, and the weakness of Costa Rica becomes her strength.

And now, in closing, I only wish to say in confirmation of my statements already published in the Congressional Record of June 29, 1914, as to the unrest of the people of Costa Rica over the pending treaty, that the newly elected President González in his message to Congress, May 8, 1914, expressed his opposition and that of the Costa Rican people against the making of any treaties, contracts or concessions of this kind as detrimental to the autonomy of Central America. And this is being reflected, day by

day, through the well-written protest of the distinguished author, Ramón Rojas Corrales, published and widely circulated by the Patriotic League of Costa Rica, in which the people of that Republic have implicit confidence.

Respectfully yours,

JOHN N. POPHAM.

WASHINGTON, *July 10, 1914.*

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BUCKINGHAM HOTEL,

WASHINGTON, D. C., *June 24, 1914.*

HON. JACOB H. GALLINGER,

*United States Senate, Washington, D. C.*

MY DEAR SENATOR: Recognizing your familiarity with the negotiations and legislation connected with the once contemplated acquisition of the Nicaragua and Costa Rica Canal route, as well as the Panama route already acquired, I take the liberty to call your attention to that feature of the pending treaty with Nicaragua, which seeks to obtain control of that route in the interest of our Government, and the relations which the people of Costa Rica sustain toward the same. But permit me in advance to acquaint you with the standpoint from which I have acquired an intimate knowledge of the situation there as it now exists.

I was appointed to the office of United States Special Treasury Agent at the Isthmus of Panama in 1889, and held that position for about four years, when I resigned it to engage in the business of developing the mineral resources in the Department of Panama, Republic of Colombia, now the Republic of Panama, but to a larger extent in the Republic of Costa Rica.

In the Department of Panama, 50 miles east of Colon, I, in company with the late John K. Cowen, then president of the Baltimore & Ohio Railroad, and J. B. McDon-

ald, contractor of the New York Subway, constructed a small railroad in order to handle metallic ores which were exported to the United States. We expended a large sum of money, all American capital, in this enterprise, exporting a great many thousands of tons of high-grade manganese ores to the United States.

In Costa Rica, in company with the late Senator John P. Jones and others, I personally have been in charge of the developing of mineral properties. In this small district there has been several million dollars invested by Americans. In the particular property which I am in charge of, known as the Costa Rica Union Mining Co., an American corporation, we have completed a splendid reduction plant and have spent about \$500,000 during the development of the property, which is now a large producing property, and one of the most successful mines in Central America, where we employ a large number of Americans and a great number of Costa Rican laborers. Several thousand Costa Rican laborers are employed in this mining district.

We are now large exporters of bullion to the United States, which fact can be certified to through the United States Mint at San Francisco and the assistant treasurer at New York City, delivered for our account through the International Banking Corporation.

I have been thoroughly familiar with the conditions existing in Panama and the Republic of Costa Rica from intimate business associations with the people for the last 20 years. During 16 years of residence in Costa Rica I can state from my personal knowledge that not only all American enterprises, but all foreign enterprises there, have received not only protection from the Costa Rican Government, but have been facilitated in their undertakings in every possible way; but our difficulties do not come through the failure of protection and help that we have always had from the Costa Rican Government, but

through the failure of our being able to secure capable and contented labor under the existing conditions, caused through their misunderstanding of our present relations and intentions toward the Republics of Colombia, Mexico and Nicaragua.

Permit me now to call your attention to some of the exciting causes that have produced this condition of unrest, suspicion and discontent among the masses of the Costa Rican people, with which we are now seriously confronted.

The secession of Panama from the Republic of Colombia, leaving the uncertain territorial line between the Republics of Panama and Costa Rica on the south, which, though now being arbitrated before Chief Justice White of our Supreme Court, the Costa Rican masses are under the impression we are in sympathy with Panama on account of our close relations with and large interests there, and, to the north, the action of our Government in dealing solely and alone with Nicaragua to acquire arbitrary control of the only highway between oceans other than Panama without giving the people of Costa Rica a voice therein, and without any consideration for their well-recognized ownership of a part of this highway; and our present complications with Mexico; and the many conflicting accounts published through our newspapers translated and republished in Costa Rica, particularly such as Mr. Watterson's "On to Panama," with the reported intention of our acquiring all territory north of Panama; and, further, the late military operations in Nicaragua with our marines, giving possession of the Government there to the present President of Nicaragua, causes the unthinking part of the Costa Rican people uncertainty as to our intentions toward them and their country. At the present time it is common talk in Costa Rica that the Costa Rican Government, in calling atten-

tion of our State Department of its rights in the Nicaraguan highway, received no satisfaction whatever, except to be informed that our Government was not purchasing the highway, only arranging for a little option upon it.

The American citizens residing in Costa Rica and doing business with the Costa Rican people, and employing large numbers of Costa Rican laborers, feel that the American Government should in some manner, before final action upon the Nicaragua treaty, express their intention and assure the Costa Rican people that we will treat with equity and justice whatever rights they may have in the Nicaraguan route as originally contemplated. Such action would at once tend to reassure the Costa Rican people and restore to us the splendid business relation with them which has heretofore existed.

To this end may I not ask you, Senator, on behalf of the great American interests there, to take such action in the Senate in consideration of the pending Nicaragua treaty as will secure to and protect Costa Rica's rights in said highway?

Yours truly,

J. N. POPHAM.

## APPENDIX M.

WASHINGTON, D. C.,

*February 2, 1916.*

MR. SECRETARY: I was profoundly and justifiedly surprised this afternoon to read, in today's issue of the *Washington Star*, the news that the Committee on Foreign Relations of the Senate had recommended the ratification by that body of the treaty relating to the construction of an interoceanic canal, and other matters, that was concluded more than a year ago by His Excellency Secretary of State W. J. Bryan, and His Excellency, the Minister of Nicaragua at this capital, General Don Emiliano Chamorro.

It was not even as much as a month ago, Mr. Secretary, that the President of the United States delivered, before more than a thousand delegates from the different sovereign nations of this hemisphere, a most admirable and happily conceived address on the true meaning of Pan Americanism, in the course of which he called upon all of our republics to uphold the rights of each, and maintain that perfect equality which must reign over their mutual relations.

Scarcely a week before that Your Excellency deigned to lay before me the draft of a Pan American Treaty, that translated in pertinent and appropriate clauses the noble and redeeming thoughts so masterfully put forth by His Excellency President Wilson on the memorable night of the 6th of January, last.

With these antecedents in mind Your Excellency will, I am sure, agree that it was not logical to suppose that your Government would go forward with a treaty, for the conclusion of which one of the parties, Nicaragua, is expressly inhibited by the solemn declaration of the chief executive of the other party, the President of the United

States himself—a treaty that flagrantly violates the established rights of a third party, Costa Rica, and against which my Government has repeatedly lodged protests before the Department of State.

In negotiating with Nicaragua in this matter, the United States has been treating with a party without capacity to contract, and ignorance of her incapacity cannot be alleged because the archives of the State Department show that it was no less an authority than the President of the United States himself who so declared.

Costa Rica is not, and has never been, systematically opposed to the advance of progress. She takes fully and duly into account the fact that the incessant increase in necessities exacted by the advance in civilization will require at no distant date the opening to world commerce of a new interoceanic highway paralleling the Panama Canal; moreover, my country well knows how utterly inadequate are her own resources for undertaking such a stupendous enterprise on her own account.

My Government also understands that there are incontrovertible reasons why the United States, rather than any other nation, is called upon to render that great service to humanity, but it naturally desires that that end be reached without inflicting upon it the humiliation resulting from the consistent ignoring, down to the present moment, of its legitimate, unquestionable and acknowledged rights.

Animated by the high spirit of justice that so ennobles the eminent executive who today rules over the destinies of this great nation, and that controls also the course of Your Excellency, his distinguished and illustrious collaborator, I respectfully beg Your Excellency to be so good as to take the necessary steps to prevent the perfecting of the treaty in question until the requisites prescribed by His Excellency Grover Cleveland, the President of the

United States, in his award of March 22, 1888, shall have been first respected and complied with.

It is with genuine satisfaction, Mr. Secretary, that I avail myself of this opportunity to reiterate to Your Excellency the assurances of my high and distinguished consideration.

MANUEL CASTRO QUESADA.

To His Excellency,

ROBERT LANSING,

*Secretary of State, Washington.*

## APPENDIX N.

MEMORANDUM IN SUPPORT OF COSTA RICA'S JOINT RIGHTS WITH NICARAGUA IN CONNECTION WITH ANY INTEROCEANIC CANAL PROJECT THAT CONTEMPLATES THE USE OF THE SAN JUAN RIVER AND LAKE NICARAGUA.

*To the Honorable the Chairman and Members of the Foreign Relations Committee of the United States Senate:*

From the year 1541, when the Emporer Charles V fixed the northern limits of Costa Rica, down through the governments of Cavallón (1561) and Artieda (1573), to the present era, Costa Rica has successfully maintained her rights in connection with the waterway which is to be a part of the contemplated Nicaraguan canal—the San Juan River, or the Desaguadero of Spanish times, through which Lake Nicaragua finds an outlet to the sea. By the Treaty of Limits entered into by Costa Rica and Nicaragua, on the 15th of April, 1858, those rights were defined and confirmed. When, in 1888, that treaty was submitted to the arbitration of the President of the United States, Mr. Cleveland, as a result of Nicaragua's repeated denials of its validity, the arbitrator, in his award of March 22, 1888 (Foreign Relations of the United States for 1888, Part 1, pages 456, *et seq.*), held the treaty to be valid and established for all time Costa Rica's riparian rights in a part of the San Juan River and her joint rights with Nicaragua in connection with any canal project involving the use of that river and the lake.

In that treaty, the boundary line of Costa Rica "is made to begin at Punta de Castilla, at the mouth of the San Juan River; thence it follows the right or southern

bank of that stream to a point three miles below the Castillo Viejo; thence it runs along the circumference of a circle drawn round the outworks of the castle as a center, with a radius of three miles, to a point on the western side of the castle, distant two miles from the river; thence parallel to the San Juan and the lake, at a distance of two miles therefrom, to the Sapo River; and thence in a straight line to the center of Salinas Bay on the Pacific Ocean."

The Cleveland award, after upholding the validity of the treaty fixing the above boundary line, proceeds to set forth Costa Rica's rights in connection with the canal course that has such vitally essential relations with that boundary;

"The Republic of Costa Rica has the right to demand indemnification for any places belonging to her on the right bank of the River San Juan which may be occupied without her consent, and for any lands on the same bank which may be flooded or damaged in any other way in consequence of works of improvement. \* \* \*

"THE REPUBLIC OF COSTA RICA CAN DENY TO THE REPUBLIC OF NICARAGUA THE RIGHT OF DEVIATING THE WATERS OF THE RIVER SAN JUAN IN CASE SUCH DEVIATION WILL RESULT IN THE DESTRUCTION OR SERIOUS IMPAIRMENT OF THE NAVIGATION OF THE SAID RIVER, OR ANY OF ITS BRANCHES, AT ANY POINT WHERE COSTA RICA IS ENTITLED TO NAVIGATE THE SAME.

"THE REPUBLIC OF NICARAGUA REMAINS BOUND NOT TO MAKE ANY GRANTS FOR CANAL PURPOSES ACROSS HER TERRITORY WITHOUT FIRST ASKING THE OPINION OF THE REPUBLIC OF COSTA RICA, AS PROVIDED IN ARTICLE VIII OF THE TREATY OF LIMITS OF THE 15th DAY OF APRIL, 1858."

Construing Article VIII, in this regard, the arbitrator says further along:

“In cases where the construction of the canal will involve an injury to the *natural rights* of Costa Rica, her opinion, or advice, as mentioned in Article VIII of the treaty, should be more than ‘advisory’ or ‘consultative.’ *It would seem in such cases that her consent is necessary, and that she may thereupon demand compensation for the concessions she is asked to make.*”

The Government of Costa Rica was not consulted, as stipulated for in the treaty of 1858, when either the Chamorro-Weitzel or the Chamorro-Bryan treaty was being negotiated. So deliberate was this violation of that treaty, and so evident the contempt for the Cleveland award, that Costa Rica would have been justified in a declaration of war against her neighbor, and might have proceeded to this extreme had she not been strong in her reliance upon the strict sense of justice that has animated the Government of the United States heretofore in her relations with that country.

Continuing his definition of the rights of Costa Rica in connection with the canal project, the arbitrator says:

“The *natural rights* of the Republic of Costa Rica alluded to in the said stipulation (Art. VIII) are the rights which, in view of the boundaries fixed by the said Treaty of Limits, she possesses in the soil thereby recognized as belonging exclusively to her; the rights which she possesses in the harbors of San Juan del Norte and Salinas Bay; and the rights which she possesses in so much of the River San Juan as lies more than three English miles below Castillo Viejo, measuring from the exterior fortifications of the said castle as the same existed in the year 1858; and perhaps other rights not here particularly specified. These rights are to be deemed injured in any case where the territory belonging to the Republic

of Costa Rica is occupied or flooded; where there is an encroachment upon either of the said harbors injurious to Costa Rica; or where there is such an obstruction or deviation of the River San Juan as to destroy or seriously impair the navigation of the said river, or any of its branches at any point where Costa Rica is entitled to navigate the same." (*Ibid.*, pages 458, 459.)

The foregoing positive findings by the President of the United States, acting as arbitrator of the treaty rights now being urged upon the Government of the United States by Costa Rica, are cited and supported by the Isthmian Canal Commission—the so-called "Walker Commission"—in its most exhaustive and authoritative report of November 16, 1901 (Senate Document No. 222, 58th Congress, 2d session). In Chapter VIII of that report, on "Rights, Privileges and Franchises," the Commission goes fully into the history and the legal status of Costa Rica's rights and interests in connection with any canal project involving the use of the San Juan River and territory adjacent to the Costa Rican frontier, and reaches the conclusion that any concession contemplating such use must be a joint concession by Costa Rica and Nicaragua.

"The treaties relating to the Nicaraguan route will first be considered, and these include not only those concluded with the Republic of Nicaragua, *but also those in which the Republic of Costa Rica was one of the contracting parties, as the geographical situation requires the consent of both these governments before a canal can be constructed on this route, for though but little of the territory of the latter will be used in any of the proposed plans, much of it will be affected thereby.*

"Whatever doubt may have existed on this point was removed by the award made by President Cleveland on the 22d day of March, 1888, in the arbitration for the settlement of differences which had

arisen between the two Republics as to their respective boundary rights, in which it was expressly determined that in cases where the construction of an Interoceanic Canal across Nicaragua will involve an injury to the natural rights of Costa Rica, *her consent to its construction is necessary*, and she may demand compensation for the concessions she is asked to make."

A conspicuous instance in the history of Nicaraguan canal enterprises is discussed fully in the Report, and goes to confirm the joint character of the rights of Costa Rica and Nicaragua as grantors of canal concessions. In 1887 Nicaragua granted to the Nicaraguan Canal Association of New York a concession for the exclusive privilege of excavating and operating a maritime canal across the territory of Nicaragua, involving the San Juan River and Lake Nicaragua. Under this concession an executing company was organized under the name of "The Maritime Canal Company of Nicaragua," and was incorporated by an act of the Congress of the United States, approved February 20, 1889. (Appendix R to Commission's Report.)

Immediately following this action by Nicaragua, the concessionary entered into a similar contract with the Government of Costa Rica (Appendix Z to Commission's Report), understanding perfectly that without such joint action its titles would be insufficient. Referring to this transaction, the Commission says:

"This contract was negotiated to *supplement* the one already obtained from Nicaragua, hereinbefore mentioned and designated as Appendix R, *it being manifest that the project generally known as the Nicaraguan canal could not be carried into execution without the consent and authority of Costa Rica*. It conferred upon the association and a company to be organized

to construct and operate the proposed canal *substantially the same rights, privileges and franchises* in Costa Rican territory as had already been conferred upon them in Nicaragua."

In consideration of the above-mentioned rights, privileges and franchises, it was agreed in that contract that Costa Rica should receive shares in the capital stock of the executing company which were "in no event to be less than \$1,500,000" in value (page 126), and Costa Rica was to have "the same privilege of appointing a member of the board of directors that had been granted to Nicaragua" (page 126). In further compensation for the privileges granted, the company consented that Costa Rican ships of war and merchant vessels under the flag of the Republic should be entitled to use the canal upon like terms as were agreed to in the contract with Nicaragua with reference to the vessels of that Republic (page 126).

The contract also contains provisions conveying to the company such lands and riparian rights as may be necessary to the construction, operation and control of the proposed canal; these provisions are interesting here as giving a more intimate idea of the character of Costa Rica's "natural rights" referred to in the Cleveland award:

"Article XV. All the area within the territory of Costa Rica, whether at the ports, roadsteads, or rivers of the two oceans, which may be necessary for the establishment of the canal, its paths, and embankments, or which may be occupied and covered by water after raising the dams which are to be constructed in the beds of the rivers, or for all necessary deviations to be made, as well as for reservoirs, dikes, spaces about the locks, stations, light-houses and canals, store-houses, buildings and work-shops, deposits for materials, and also all those required for the routes, services, railways and canals of the same nature, for the transportation of materials to the line of the work, and for feeders of the canal; in short,

all lands and places within the territory of Costa Rica necessary to the construction and operation of the canal, as may be laid down in the final drawings and plans made by the engineers of the association, shall be placed by the State at the disposal of the said association under the conditions set forth in the following article."

The Maritime Canal Company entered upon the work of construction, but the time expired within which the most essential conditions were to have been complied with, the undertaking was finally abandoned, and the company's contracts with Costa Rica and Nicaragua were therefore declared void and forfeited.

The Commission's Report also makes it clear that in all projects for a canal that will utilize the San Juan river and Lake Nicaragua, whether on the part of individuals, corporations, the United States, or other governments, Costa Rica has been treated with and consulted as a joint party in interest with Nicaragua (Report, pages 124, 125). Nothing could make this status more positive than the attitude and action of the United States when the Commission's Report was presented to that Government and negotiations were instituted with Great Britain for the abrogation of the Clayton-Bulwer treaty and the conclusion of the Hay-Pauncefote treaty, in 1900-1901. At that time the United States, on the final failure of the French to construct a canal through Panama, had determined to undertake the construction of a canal through either Panama or Nicaragua, and for the purpose of securing to herself certain preliminary rights, and winning the good will of the two governments that possessed a joint interest in the latter route, entered into the following protocol *with both Nicaragua and Costa Rica*. (But one is quoted here because the language of both is identical and both were signed on the same day.)

"It is agreed between the two Governments that when the President of the United States is authorized by law to acquire control of such portion of the territory now belonging to Costa Rica as may be desirable and necessary on which to construct and protect a canal, of depth and capacity sufficient for the passage of vessels of the greatest tonnage and draft now in use, from a point near San Juan del Norte on the Caribbean Sea, via Lake Nicaragua to Brito on the Pacific Ocean, they mutually engage to enter into negotiations with each other to settle the plan and the agreements in detail, found necessary to accomplish the construction and to provide for the ownership and control of the proposed canal.

"As a preliminary to such future negotiations it is forthwith agreed that the course of said canal and the terminals thereof shall be the same that were stated in a treaty signed by the plenipotentiaries of the United States and Great Britain on February 5, 1900, and now pending in the Senate of the United States for confirmation, and that the provisions of the same shall be adhered to by the United States and Costa Rica."

It will be noted that the foregoing protocol is in the nature of a guarantee of the respect due by the United States to Costa Rica's canal site rights in so far as they relate to such Costa Rican territory as it may be necessary to acquire in connection with the canal. It is important, however, to call attention to the two-fold character of the rights confirmed in Costa Rica by the Cleveland award: (1) her rights in her own exclusive territory which the United States may need to acquire as a part of a canal zone and (2) her treaty boundary rights in the San Juan River, as riparian co-owner, her rights to compensation for damages occasioned by the overflow or deviation of her streams as a result of construction work on the San Juan River or the damming of her streams, and her rights of navigation of the entire San Juan River course. The pro-

tocol might be held to be a sufficient guarantee, in the present situation, of Costa Rica's rights under the above clause (1), but it is *not* a guarantee with respect to those "natural rights" confirmed by the Cleveland award and outlined in clause (2).

In the light of the foregoing, it is respectfully submitted that the Chamorro-Bryan Treaty now before your Committee is invalid, inoperative and ineffective to secure to the United States the property rights and interests therein sought to be conveyed, and is a direct violation of the sovereignty of Costa Rica, for the following reasons:

1. Nicaragua failed to *consult* the Government of Costa Rica before entering into the treaty here in question, as she was bound to do under her agreement in the eighth article of the Cañas-Jerez Treaty of April 15, 1858.

2. Nicaragua, before signing the Chamorro-Bryan Treaty failed to secure the *consent* of the Government of Costa Rica, as she was bound to do under the same article (Cañas-Jerez Treaty of 1858), which President Cleveland, in confirming the validity of that treaty, construed to mean that such consent was necessary.

3. In all previous instances in which Nicaragua has entered into contracts with third parties for canal rights of way and construction, Costa Rica has been joined in the transaction by those parties who have for their own protection secured her participation in contemporaneous contracts of like tenor.

4. The United States, by her identical protocols of 1900, has already committed herself to the recognition of Costa Rica's joint rights in such canal contracts and conventions and to the necessity of safeguarding not only her own but Costa Rica's interests by joining the latter in any eventual Nicaraguan canal transaction.

The Chamorro-Bryan Treaty, therefore, cannot, if ratified, constitute a valid, legal conveyance of the rights

sought to be secured by the United States, in view of the legal incapacity of one of the parties thereto to contract at this time, and of the inhibition enforceable against that party, under the authority of the Cleveland award.

While disavowing any desire or purpose to stand selfishly in the way of the accomplishment of the important project contemplated in the treaty before you, Costa Rica is impelled to protest against its ratification until the requirements prescribed by President Cleveland shall have been complied with.

Respectfully submitted.

HARRY W. VAN DYKE,  
*Counsel for Costa Rica,*  
*Woodward Building, Washington, D. C.*

## APPENDIX Ñ.

### NICARAGUAN CANAL ROUTE.

February 18, 1916.

The Senate, in executive session, considered and agreed to the following resolution of ratification:

*Resolved (two-thirds of the Senators present concurring therein),* That the Senate advise and consent to the ratification of the convention between the United States and Nicaragua, signed at Washington on August 5, 1914, granting to the United States, in return for a money payment, the exclusive proprietary rights for the construction and operation of an interoceanic canal by a Nicaragua route, the lease of certain islands, and the right to establish a naval base on the Gulf of Fonseca, with the following amendments, to wit:

In Article I, line 2, after the words "United States," insert a comma (,) and the following words: "forever free from all taxation or other public charge," followed by a comma (,).

At the end of Article III strike out the period (.) and add the following: "or other public purposes for the advancement of the welfare of Nicaragua in a manner to be determined by the two high contracting parties, all such disbursements to be made by orders drawn by the minister of finance of the Republic of Nicaragua and approved by the Secretary of State of the United States or by such person as he may designate."

*Provided,* That whereas Costa Rica, Salvador, and Honduras have protested against the ratification of said convention in the fear or belief that said convention might in some respect impair existing rights of said States, therefore it is declared by the Senate that in advising and consenting to the ratification of the said convention as amended such advice and consent are given with the understanding, to be expressed as a part of the instrument of ratification,

that nothing in said convention is intended to affect any existing right of any of the said named States.

\* \* \* \* \*

The yea-and-nay vote on the ratification of the treaty with Nicaragua resulted—yeas 55, nays 18.

\* \* \* \* \*

So the treaty with Nicaragua was ratified and made public, as follows:

\* \* \* \* \*

The Government of the United States of America and the Government of Nicaragua being animated by the desire to strengthen their ancient and cordial friendship by the most sincere cooperation for all purposes of their mutual advantage and interest and to provide for the possible future construction of an interoceanic ship canal by way of the San Juan River and the great Lake of Nicaragua, or by any route over Nicaraguan territory, whenever the construction of such canal shall be deemed by the Government of the United States conducive to the interests of both countries, and the Government of Nicaragua wishing to facilitate in every way possible the successful maintenance and operation of the Panama Canal, the two Governments have resolved to conclude a convention to these ends, and have accordingly appointed as their plenipotentiaries:

The President of the United States, the Hon. William Jennings Bryan, Secretary of State; and

The President of Nicaragua, Señor General Don Emiliano Chamorro, Envoy Extraordinary and Minister Plenipotentiary of Nicaragua to the United States;

Who, having exhibited to each other their respective full powers, found to be in good and due form, have agreed upon and concluded the following articles:

ARTICLE I. The Government of Nicaragua grants in perpetuity to the Government of the United States, forever free from all taxation or other public charge, the exclusive proprietary rights necessary and con-

venient for the construction, operation, and maintenance of an interoceanic canal by way of the San Juan River and the great Lake of Nicaragua or by way of any route over Nicaraguan territory, the details of the terms upon which such canal shall be constructed, operated, and maintained to be agreed to by the two Governments whenever the Government of the United States shall notify the Government of Nicaragua of its desire or intention to construct such canal.

ART. II. To enable the Government of the United States to protect the Panama Canal and the proprietary rights granted to the Government of the United States by the foregoing article, and also to enable the Government of the United States to take any measure necessary to the ends contemplated herein, the Government of Nicaragua hereby leases for a term of 99 years to the Government of the United States, the islands in the Caribbean Sea known as Great Corn Island and Little Corn Island; and the Government of Nicaragua further grants to the Government of the United States for a like period of 99 years the right to establish, operate, and maintain a naval base at such place on the territory of Nicaragua bordering upon the Gulf of Fonseca as the Government of the United States may select. The Government of the United States shall have the option of renewing for a further term of 99 years the above leases and grants upon the expiration of their respective terms, it being expressly agreed that the territory hereby leased and the naval base which may be maintained under the grant aforesaid shall be subject exclusively to the laws and sovereign authority of the United States during the terms of such lease and grant and of any renewal or renewals thereof.

ART. III. In consideration of the foregoing stipulation and for the purposes contemplated by this convention and for the purpose of reducing the present indebtedness of Nicaragua, the Government of the United States shall, upon the date of the exchange of ratification of this convention, pay for the benefit of

the Republic of Nicaragua the sum of \$3,000,000 United States gold coin, of the present weight and fineness, to be deposited to the order of the Government of Nicaragua in such bank or banks or with such banking corporation as the Government of the United States may determine, to be applied by Nicaragua upon its indebtedness or other public purposes for the advancement of the welfare of Nicaragua in a manner to be determined by the two high contracting parties, all such disbursements to be made by orders drawn by the minister of finance of the Republic of Nicaragua and approved by the Secretary of State of the United States or by such person as he may designate.

ART. IV. This convention shall be ratified by the high contracting parties in accordance with their respective laws, and the ratifications thereof shall be exchanged at Washington as soon as possible.

In witness whereof the respective plenipotentiaries have signed the present treaty and have affixed thereunto their seals.

Done at Washington, in duplicate, in the English and Spanish languages, on the 5th day of August, in the year 1914.

WILLIAM JENNINGS BRYAN. [SEAL.]

EMILIANO CHAMORRO. [SEAL.]

(From *Congressional Record*, of Washington, No. 49,  
of February 18, 1916.)

## APPENDIX O.

WASHINGTON, D. C.,  
*February 21, 1916.*

MR. SECRETARY: The many and peremptory occupations that now crowd upon Your Excellency as a result of the world upheaval must have made it impossible for Your Excellency to devote the time necessary for a study of the note which I had the honor to address to Your Excellency on the 2nd instant, protesting against the perfecting of the Bryan-Chamorro canal convention, and of the printed Memorandum on the subject prepared by the attorney for the Legation, Harry W. Van Dyke, Esquire, of which I took the liberty of sending Your Excellency several copies.

And I say that it must have been impossible for your Excellency to inform yourself of the contents of those documents, because, not only has my above-mentioned note not yet been honored by a response, but on the 18th instant the Senate gave its approval to the treaty which Costa Rica, in the assertion of her incontrovertible rights, had so recently challenged.

However weighty and important may be the opinion of the Senate, the favorable action taken by that body in the matter of this treaty makes absolutely no difference in the nature of the case.

The Senate, in ratifying the agreement subscribed by ex-Secretary Bryan, could in no measure free that agreement from the fundamental defect that renders it void, to wit, the incompleteness of Nicaragua's capacity to negotiate that pact.

The United States has treated with a party that is without capacity to contract obligations in this matter, and the pact by which the United States believes it has acquired certain rights is nothing (and there is not a better

occasion for the justified use of this now well-known expression) but a scrap of paper.

But however innocuous may be the action of the Senate to affect the fundamentals of the question, it has nevertheless brought about a notable change in the situation of Costa Rica; the affront to my Government which it claims to have received as a result of the contemptuous disregard of its rights by the conclusion, without its knowledge, of a pact that should have been, at its inception, submitted to my Government for approval, has ceased to be merely potential—it is a consummated fact. Since the vital defect that invalidates the treaty and that my Government interprets as an affront to the sovereign integrity of Costa Rica, dates from the very instant when the convention was negotiated, the safeguarding clause is worthless which, at the last moment, without previous notice to, or the consent of, this Legation, was added to the text of the convention for the purpose of holding harmless the rights of other parties that considered themselves affected by the pact.

For many months my Government has been active before the Government of Your Excellency in opposition to this consummation, and since all its efforts have been in vain, I have no other course, at the moment, but to lodge with you a formal protest against what has taken place and to await the arrival of further instructions informing me as to the best means, in the opinion of my Government, of solving the lamentable problem now confronting us.

I beg Your Excellency to accept the assurances of my highest and most distinguished consideration.

MANUEL CASTRO QUESADA.

To His Excellency,

ROBERT LANSING,

*Secretary of State, Washington.*

## APPENDIX P.

LEGATION OF THE UNITED STATES OF AMERICA,  
SAN JOSÉ, *February 21, 1916.*

No. 138.

EXCELLENCY: I am instructed to inform Your Excellency as follows, to wit:

"The Senate of the United States, on the eighteenth instant, by a vote of fifty-five to eighteen, consented to the ratification of the Nicaragua Treaty, with the following amendments:

"Article 1, line 2, after the words 'United States' insert comma and the following words, 'forever free from all taxation and other public charges,' followed by comma.

"At end of Article 3, strike out period and add the following: 'or other public purposes for the advancement of the welfare of Nicaragua in a manner to be determined by the two High Contracting Parties, all such disbursements to be made by orders drawn by the Minister of Finance of the Republic of Nicaragua and approved by the Secretary of State of the United States or by such person as he may designate.'

"The resolution of ratification contains the following clause: '*Provided*, That whereas Costa Rica, Salvador, and Honduras have protested against the ratification of said Convention in the fear or belief that said Convention might in some respect impair existing rights of said States, therefore it is declared by the Senate that in advising and consenting to the ratification of the said Convention as amended, such advice and consent are given with the understanding to be expressed as part of the instrument of ratification that nothing in said Convention is intended to affect any existing rights of any of the said named States.' "

I am further instructed to request that Your Excellency's Government will have the goodness to inform the press of

Costa Rica of the foregoing action of the Senate of the United States.

I avail myself of the occasion to repeat to Your Excellency the assurance of my most distinguished consideration.

(Signed) E. J. HALE.

To His Excellency,

Señor DON MARIANO GUARDIA,

*Minister for Foreign Affairs, etc., San José.*

## **APPENDIX Q.**

(This is the English text of the Cleveland award reproduced herein as Appendix CH.)

## APPENDIX R.

DEPARTMENT OF STATE,  
WASHINGTON, *March 1, 1916.*

SIR: I have the honor to acknowledge the receipt of your notes of February 2, 8, and 21, 1916, in which you again protest on behalf of your Government against the treaty between the Government of Nicaragua and that of the United States, which was ratified by the United States Senate on February 18, 1916.

The views of the Department regarding the protest of Costa Rica against the treaty under consideration were set forth, at some length, in the Department's note of August 1, 1914, to Señor Don Joaquín Bernardo Calvo, then Minister of Costa Rica to the United States. Those views are believed to be applicable equally well to the present protest, as embodied in your personal notes under acknowledgment. I reiterate what was then said, namely, that the treaty was not designed and is not believed to infringe any right or interest of Costa Rica, or of any of the countries adjacent to Nicaragua. In this relation permit me to call your attention to a provision in the resolution of ratification of the convention passed by the United States Senate on February 18, 1916, as follows:

"Provided, That whereas Costa Rica, Salvador, and Honduras have protested against the ratification of said Convention in the fear or belief that said Convention might in some respect impair existing rights of said States, therefore it is declared by the Senate that in advising and consenting to the ratification of the said Convention as amended such advice and consent are given with the understanding, to be expressed as a part of the instrument of ratification, that nothing in said Convention is intended to affect any existing right of any of the said named States."

In the light of the declaration of the Department in its note of August 1, 1914, referred to, and of the aforesaid explicit declaration by Congress, I am unable to perceive any ground for protest on the part of your Government.

In conclusion I beg leave to remind you that on December 1, 1900, Nicaragua and Costa Rica each executed a separate protocol of an agreement with the United States, whereby each of the said Governments separately became engaged to enter into negotiations with the United States to settle the details of agreements found necessary to accomplish the ownership and control by the United States of an interoceanic canal route from San Juan del Norte to the Pacific Ocean. The agreement contemplated by the said protocol with Nicaragua has in part at least been embodied in the treaty under discussion, and, since the Government of the United States has indicated its willingness to enter into negotiations for the conclusion of a similar nature with the Government of Costa Rica, I am not able to perceive wherein the treaty which has been concluded with Nicaragua can be thought to affect adversely any existing right of the neighboring Republics or to indicate an intent upon the part of the United States to ignore the Government of Costa Rica.

Accept, sir, the renewed assurances of my highest consideration.

ROBERT LANSING.

Señor Don MANUEL CASTRO QUESADA,  
*Minister of Costa Rica,*  
*Washington*









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